

The claimant is a NH resident who taught dance classes in MA. She demonstrated that she had to stop working when the dance studio closed due to COVID-19. Board held that she was out of work for a listed COVID-19 reason under CARES Act § 2102(a)(3)(A)(ii)(I)(kk).

**Board of Review
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Issue ID: N6-FJV8-NP9R

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny Pandemic Unemployment Assistance (PUA) benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant filed a claim for PUA benefits with the DUA in May 2020, which was made effective March 8, 2020. Although initially approved, the DUA subsequently denied the claimant benefits in a determination issued on November 12, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination and denied PUA benefits in a decision rendered on February 22, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to establish that she was unemployed for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and, thus, the claimant was not eligible for PUA benefits. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to consider the testimony regarding the claimant's loss of employment as a dance instructor in Massachusetts in 2020 and related payroll documents. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's original decision, which concluded that the claimant, a New Hampshire resident, did not submit sufficient documentary evidence to show that she had been working in Massachusetts at the time she became unemployed due to the COVID-19 public health emergency, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. In 2019 and 2020, the claimant was self-employed as a dance instructor at a dance studio in Massachusetts.
2. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) with an effective date of March 8, 2020.
3. The claimant filed the PUA claim with a New Hampshire address.
4. The claimant was guaranteed to work a minimum of one (1) class a week and a minimum of three (3) hours each week. The claimant had the potential to work additional days.
5. The claimant taught one class a week, on Saturdays from 9:00 a.m. until 12:00 p.m., for three (3) hours. The claimant was paid \$20.00 per hour. The claimant was paid via a business check.
6. The claimant taught all available classes on the Saturdays she was assigned to teach.
7. The dance studio shut down on May 9, 2020, due to the COVID-19 public health emergency.
8. From May 9, 2020, through August 22, 2020, the claimant was unable to teach her class as a direct result of the COVID-19 public health emergency. The claimant was unable to teach her regularly scheduled dance classes on Saturdays.
9. The claimant returned to work for the dance studio on August 22, 2020, before stopping on September 12, 2020.
10. The claimant received three (3) paychecks for work done in August and September of 2020 on behalf of the dance studio.
11. The claimant has not worked for the dance studio since September 12, 2020, and is no longer working for the dance studio.
12. On August 4, 2020, the claimant began employment in New Hampshire as a school bus driver. The claimant began working part-time but became full-time when the fall 2020 school year began.
13. On November 12, 2020, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Non-Monetary Issue Determination, informing the claimant that she was not eligible to receive benefits beginning the week ending February 8, 2020. She was informed that she was not eligible to receive benefits, because she failed to respond with the appropriate documentation by the due date.

14. The claimant timely appealed the November 12, 2020, Notice of Non-Monetary Issue Determination.
15. The claimant's 2019 and 2020 Federal and State Income Tax Returns show her work as a dance instructor in Massachusetts.
16. The claimant's 2019 Schedule C Profit or Loss from Business shows the claimant earned \$1,645.00 from her work as a dance instructor.
17. The claimant's 2020 Schedule C Profit or Loss from Business shows the claimant earned \$645.00 from her work as a dance instructor.
18. The dance studio issued the claimant a 2020 1099-NEC, listing nonemployee compensation in the amount of \$645.00.
19. The 1099-NEC, in Box 6, lists the State/Payer state as "NH". The claimant does not know why Box 6 lists "NH." The claimant has resided in New Hampshire since she started working for the dance studio. The dance studio was, at all times, located in Massachusetts.
20. The claimant has copies of sixteen (16) paychecks issued to her for work done in 2020, totaling \$645.00. The \$645.00 was earned from performing her dance instructor services.
21. Since the effective date of her claim, the claimant has been able to work. No physical ailment has prevented her from working.

Credibility Assessment:

The claimant and her documentation are deemed to be credible. The claimant's testimony is corroborated by the documentation that she presented prior to her Remand Hearing.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant does not meet the CARES Act eligibility requirements.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under § 2102 of the CARES Act of 2020 and administered by the U.S. Secretary of Labor.¹ In order to qualify for PUA benefits, the claimant must show that she is a covered individual within the meaning of the CARES Act. Among the criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is that an individual will be eligible for PUA benefits if the person was “unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities.”² Further, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.³ Therefore, in order to be eligible for benefits, the claimant must show that she had work in Massachusetts that was negatively impacted by the COVID-19 pandemic.

The claimant filed the PUA claim with a New Hampshire address. *See Consolidated Finding of Fact # 3.* During the initial hearing, her testimony described how she had to stop working in Massachusetts at a dance studio due to the COVID-19 public health emergency. However, because she did not submit documentary evidence to support that testimony, the review examiner concluded that the record lacked substantial evidence to show that she was eligible to file a PUA claim in Massachusetts. We remanded the case for the review examiner to consider whether additional documents that the claimant submitted with her Board appeal showed that she was working in Massachusetts in 2020.

After remand, the record in this case includes substantial evidence, including both sworn testimony and documents, which establish that the claimant was forced to stop performing work as a dance instructor in Massachusetts due to the COVID-19 public health emergency. The claimant testified that she worked as a dance instructor at a Massachusetts dance studio in early 2020. *See Consolidated Finding # 1.* The dance studio shut down on May 9, 2020, due to the COVID-19 public health emergency. From May 9, 2020, through August 22, 2020, the claimant was unable to teach her class for this reason, and then she returned to teach three more weeks before September 12, 2020. *See Consolidated Findings of Fact ## 7–10.* She presented copies of sixteen (16) paychecks issued to her for work done in 2020, totaling \$645.00 for her dance instructor services. *See Consolidated Finding of Fact # 20.* Because she only taught her class for a few weeks at the end of the summer, we can reasonably infer that the 16 paychecks were for work performed prior to May 9, 2020. Moreover, her 2019 and 2020 tax returns with her schedule C from each year reflect reduced earnings from 2019 to 2020. *See Consolidated Findings of Fact ## 15-17.*

The claimant has satisfied the eligibility criteria under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. She has shown that she experienced a significant diminution of her customary or usual services because of the COVID-19 public health emergency. She has also shown met her burden to show that she is eligible to file a PUA claim in Massachusetts, because she was performing her services in Massachusetts at the time she became unemployed.

¹ Pub. L. 116-136 (Mar. 27, 2020), § 2102.

² U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), Attachment I, (kk)(1), p. I-4.

³ *See* UIPL 16-20, Change 6, 4(c), p. 7.

Finally, we note that, during the initial hearing, the claimant testified that her benefit effective date was March 8, 2020. A review of DUA's electronic record-keeping system for PUA, the FastUI database, shows that the claimant filed her PUA claim on May 12, 2020. The claimant testified at the remand hearing that her last day of work was May 9, 2020, and that the dance studio closed on May 9, 2020. *See* Consolidated Finding of Fact # 7. For some reason, the DUA made her claim retroactive to March 8, 2020. Since the claimant's unemployment began on May 9, 2020, she is not eligible for any benefits prior to week beginning May 10, 2020. Additionally, on August 4, 2020, the claimant began employment in New Hampshire as a school bus driver. *See* Consolidated Finding of Fact # 12. Since the claimant became re-employed on August 4, 2020, she is not eligible for any benefits as of the week beginning August 9, 2020.

We, therefore, conclude as a matter of law that that the claimant has met her burden to show that she was unable to work in Massachusetts for a COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive PUA benefits for the week beginning May 10, 2020, through August 8, 2020, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 3, 2021



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

TJG/rh