

**The claimant worked at a bike training gym in Massachusetts in 2020 prior to the pandemic. Because the company furloughed the claimant due to the COVID-19 public health emergency in March 2020, and the claimant became unemployed for a reason listed under the CARES Act. She is eligible for PUA benefits.**

**Board of Review  
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Chairman  
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Member  
Michael J. Albano  
Member**

**Issue ID: N6-FJV8-PD7N**

### 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 reverse.

The claimant filed a claim for PUA with the DUA, effective March 15, 2020, which was denied in a determination issued on September 16, 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 18, 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 working in Massachusetts in 2020 and that she was out of work for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. Thus, he concluded that 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 afford the claimant an opportunity to present additional evidence that she was working in 2020 and that her job was affected by COVID-19. The claimant attended the remand hearing. Thereafter, the review examiner issued his 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 decision, which concluded that the claimant was ineligible for PUA benefits because she failed to establish that she performed and lost work in Massachusetts in March 2020, 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. The claimant filed a claim for PUA benefits, with an effective date of March 15, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. The claimant has a home address of California.
3. The claimant attended a Massachusetts college in 2019 and graduated in May 2020. The claimant was employed by the college and has a 2019 W-2 showing \$1,812 in wages.
4. The claimant has bank records showing regular payroll deposits from [a] New York bike training company from July 26, 2019, to March 20, 2020.
5. The claimant has a pay statement from a New York bike trainer company for February 16, 2020, through February 29, 2020. The pay statement is addressed to the claimant in Massachusetts. She worked for this company in 2020 prior to the COVID-19 pandemic.
6. The claimant has a 2019 W-2 from the New York bike trainer company showing \$2,965.10 in wages.
7. The claimant has a 2020 W-2 from the New York company showing \$1,510.91 in wages. The W-2 is addressed to the claimant at her Massachusetts address.
8. The claimant has a March 31, 2020, furlough letter from the New York bike trainer company. The letter states the company is placing employees, such as the claimant, on unpaid furlough due to COVID-19 effective March 30, 2020. The claimant last worked for the company on March 20, 2020, as reflected in her bank statement.
9. The claimant never returned to work for the New York bike trainer company.
10. On September 16, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive benefits beginning the week ending February 8, 2020. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant's testimony about working in Massachusetts and losing work due to the COVID-19 pandemic was credible. The claimant submitted a 2020 W-2, which was placed on the record. *See* Remand Exhibit # 5. The claimant has submitted credible documentary evidence and testimony that supports she was working in Massachusetts in 2020 and was forced to stop work due to the COVID-19 pandemic.

The Board's remand order requested information about the 2020 pay statement (*see* Remand Exhibit # 3) and the furlough letter (*see* Remand Exhibit # 2). Findings of fact were made regarding those documents.

### 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. Based upon these new consolidated findings, we disagree with the review examiner's original legal conclusion that the claimant was not eligible for PUA benefits.

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.<sup>1</sup> 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 severally limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities."<sup>2</sup> Further, a claimant must file for PUA benefits in the state where she was working at the time she became unemployed.<sup>3</sup> Therefore, in order to be eligible for benefits, the claimant must show that she had work in Massachusetts that was impacted by the COVID-19 pandemic.

In this case, the claimant has filed a claim for PUA benefits, effective March 15, 2020. The consolidated findings provide that from July 2019 through March 2020, the claimant was working at a bike trainer company in Massachusetts. *See* Consolidated Findings ## 4-7. The company last paid the claimant on March 20, 2020, and, as of March 30, 2020, the company placed the claimant on unpaid furlough due to the COVID-19 public health emergency. *See* Consolidated Finding # 8. These findings show that the claimant was working in Massachusetts in 2020 prior to the COVID-19 pandemic and became unemployed beginning March, 2020, because the COVID-19 public health emergency forced her stop working.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was out of work in Massachusetts for one of the eligibility reasons established by the U.S. Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>2</sup> U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(k), p. I-6.

<sup>3</sup> *See* UIPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. 1-3

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits as of the week beginning March 15, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 3, 2021**



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](http://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.

KB/rh