

**The claimant established that she worked in MA in 2020, but failed to show that she lost her employment as a direct result of the COVID-19 emergency.**

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

**Issue ID: N6-FJV9-6JK2**

### 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 affirm.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020, which was denied in a determination issued on November 13, 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 19, 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 obtain additional evidence pertaining to the claimant's employment status in 2020. The claimant participated in 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 did not present sufficient evidence to show that she was out of work due to an approved COVID-19 related reason, 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 filed the PUA claim using a New York address.
3. The claimant has a Massachusetts identification card which was issued October 26, 2020.
4. In 2019, the claimant was paid \$1,761.32 in wages from a Massachusetts employer.
5. In 2020, the claimant worked for [Company A] in [Town A], MA. She was paid gross wages of \$579.13 for that work. She worked for 45 hours for the company in 2020.
6. The claimant does not have documentation showing the dates that she worked in 2020. The claimant does not have authentic documentation explaining why she stopped working for [Company A] in 2020.
7. The claimant's UI wage detail by Social Security number shows \$57[9].13 in wages in the first quarter of 2020 at [Company A] in 2020. There are no wages from this employer in 2018 or 2019.
8. The claimant has no documentation showing that she was residing in Massachusetts in 2019 or 2020.
9. On November 13, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing [her] that [s]he was not eligible to receive benefits beginning the week ending February 8, 2020.

#### Credibility Assessment:

The inconsistencies in the claimant's testimony relating to her work and compensation at [Company A] detracted from the overall credibility of her testimony. The claimant testified that she was paid in cash in 2018, by cash and W-2 in 2019, and by W-2 in 2020. This testimony is not credible. The DUA's records show no 2018 or 2019 wages. However, the company reported wages in 2020. Because the claimant's wages were reported by W-2 in 2020, it seems likely the claimant would have been issued a W-2 in 2018 and 2019 if she had been working for the company. Moreover, paying the claimant in both cash (unreported payments) and by W-2 (reported wages) seems unlikely. Therefore, it was found that the claimant only worked for [Company A] in 2020.

Because the claimant worked only forty-five (45) hours in 2020, she was asked about when she stopped working in 2020 to determine if it was around the time of the COVID-19 pandemic. She could not recall any of the specific dates or times when she worked in 2020. Her uncertainty about when she worked also detracted from her credibility. Moreover, because the claimant did not know when she stopped working, she did not show that she was out of work due to COVID-19. Thus, no finding was made that the claimant stopped working due to the pandemic.

In addition, the claimant previously submitted a letter purporting to state that the claimant worked for [Company A] from 2018 to March of 2020, and that she separated due to COVID-19. The letter is rejected as not being authentic. The claimant testified that the person who allegedly wrote the letter did not supervise her (thus calling into question the basis of knowledge that the person would have had to write the letter), and, as noted above, it is not credible that the claimant has performed services for [Company A] since 2018.

In accordance with the Board's remand order, the claimant was asked to submit specific documentary evidence, including a new letter from [Company A] and documentation showing what the GUSTO payments represented. She agreed to do so. However, no documents were received. The lack of documentation submitted, especially where specifically requested by the Board, further detracted from her testimony and factored into the overall assessment that the claimant has not shown that she was out of work due to COVID-19.

### 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.

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 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."<sup>2</sup>

After remand, the review examiner found that the claimant was working in Massachusetts in 2020, but she failed to provide substantial and credible evidence to establish when she separated from the employer and the reason for the separation. Based on these findings, we cannot conclude that the claimant lost employment in 2020 as a direct result of the COVID-19 emergency. Thus, the claimant has not met the criteria for PUA eligibility under the CARES Act.

We, therefore, conclude as a matter of law that the claimant has not met her burden to show that she was out of work in Massachusetts due to the COVID-19 public health emergency for any reason allowed under the CARES Act, § 2102(a)(3)(A)(ii)(I).

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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, Change 6 (Sept. 3, 2021), Attachment I, (kk)(1), p. I-4.

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning March 15, 2020.

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



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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.

SVL/rh