

The claimant is a NY resident who did rideshare services in MA up until July 2020. He demonstrated that, because customers reduced their use of rideshare services during the pandemic, he experienced a significant diminution of services. Board held he was out of work for a listed COVID-19 reason under CARES Act § 2102(a)(3)(A)(ii)(I)(kk) and is eligible for PUA benefits.

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

Issue ID: N6-FJV9-6KKL

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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective March 1, 2020, which was denied 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 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 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 additional evidence and to address inconsistencies in the record. 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 decision, which concluded that the claimant ride-share driver had insufficient financial documentation of services or earnings in Massachusetts in 2020, and therefore did not establish that he was working in Massachusetts and affected by the COVID-19 public health emergency in any of the specific ways mentioned by the CARES Act, 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 1, 2020.
2. At the time of the hearing, the claimant was sixty-one years of age.
3. The claimant filed the PUA claim using a New York address. The claimant moved to New York from Massachusetts in July 2020.
4. The claimant worked as a ride share driver for two ride share companies since 2016.
5. In January and February of 2020, the claimant was working in Massachusetts as a rideshare driver.
6. When the COVID-19 public health emergency was declared in March 2020, the pandemic restrictions reduced the demand for ride share services, and the claimant's opportunities to work and his earnings were significantly decreased.
7. The claimant filed his 2019 Federal and Massachusetts tax returns, and included information about his work in the returns. The Schedule C showed gross receipts from driving of \$11,762 and net earnings of \$5,943.
8. The claimant was issued a 2019 1099-K from each of two rideshare companies.
9. The claimant filed his 2020 Federal tax return and his 2020 Massachusetts part-year resident tax return. The Schedule C showed gross receipts of \$1,602 and net earnings of \$248. The Massachusetts tax return also showed the claimant spent 182 days out of 365 in Massachusetts.
10. The claimant was issued a 2020 1099-K from one rideshare company.
11. The claimant did not work again in 2020 after the pandemic was declared.

Credibility Assessment:

During the remand hearing, the claimant offered credible testimony regarding his work as a ride share driver and how the COVID-19 public health emergency affected it. He provided credible documentation, including his 2019 and 2020 tax returns along with his schedule C from each year. The claimant provided his identification certificates with his picture from each company to show that he worked for the rideshare businesses. The claimant's 2020 Massachusetts tax return supported his testimony that he lived in Massachusetts until July 2020. He credibly explained that his move to New York in July was a permanent move in part because of the uncertainties associated with the pandemic and to be closer to his son and new grandchild.

Ruling of the Board

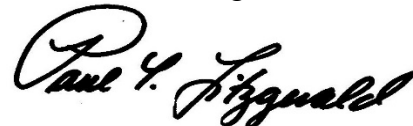
In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. Upon 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. However, 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 he is a covered individual within the meaning of the CARES Act. Among the requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that he is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). Pursuant to § 2102(a)(3)(A)(ii)(I)(kk), the U.S. Secretary of Labor has stated that one of those listed reasons is a self-employed individual who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency. *See* Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sep. 3, 2021), (kk), p. I-3. Additionally, because the claimant is a New York resident, he must show that he became unemployed in Massachusetts in order to be eligible to file a claim in Massachusetts.

The consolidated findings provide that the claimant moved to New York from Massachusetts in July 2020. He worked as a ride share driver for two ride share companies since 2016. In January and February of 2020, he was working in Massachusetts as a rideshare driver. *See* Consolidated Findings of Fact ## 3–5. When the COVID-19 public health emergency was declared in March 2020, the pandemic restrictions reduced the demand for ride share services, and the claimant's opportunities to work and his earnings were significantly decreased. *See* Consolidated Finding of Fact # 6. These reduced services and earnings are reflected in his 2019 and 2020 tax returns with his schedule C from each year, in addition to his 1099-K for each year. *See* Consolidated Findings of Fact ## 7–10. These findings show that he experienced a significant diminution of his customary or usual services because of the COVID-19 public health emergency.

We, therefore, conclude as a matter of law that that the claimant has shown that he 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 reversed. The claimant is entitled to receive PUA benefits for the week beginning March 1, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 6, 2021

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



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