

The claimant was performing services as an independent contractor in her home states of Kentucky and South Carolina for a Massachusetts based company. As she was physically located in Kentucky and South Carolina, her work was not performed in Massachusetts pursuant to G.L. c. 151A, § 3. She therefore was not eligible to file a PUA claim in Massachusetts.

**Board of Review
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Issue ID: N6-FJV9-8JNL

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 September 15, 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 January 15, 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 when her work was impacted by the COVID-19 pandemic. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant, a South Carolina resident, failed to show that she was working in Massachusetts when her work was impacted by the COVID-19 pandemic, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) which was determined to be effective March 15, 2020.
2. The claimant filed his [sic] PUA claim using an address located in South Carolina.

3. On September 16, 2020, the claimant was issued a Notice of Non-Monetary Issue Determination (COVID-19 Eligibility). The notice states that beginning the week ending February 8, 2020, the claimant did not meet the eligibility requirements to qualify for benefits under the PUA program because she failed to provide the proper documentation by the due date.
4. Prior to filing for PUA claims, the claimant was an independent contractor, working as a field scout in Kentucky for a nation-wide nursing agency, a company based in Massachusetts.
5. The claimant filed her PUA claim in March 2020 when she stopped getting work from the agency and lost many of her elderly clients due to the COVID-19 public health emergency.
6. The claimant worked and lived in Kentucky in 2019 and moved to South Carolina in 2020. She did not work or live in Massachusetts.
7. The claimant has no connection to Massachusetts other than that the company she received work and cases from is based in Massachusetts.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the 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 findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant was not eligible for PUA benefits because she neither lived nor worked in Massachusetts.

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 he or she 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." 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.² 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.

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

² See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

The CARES Act also incorporates applicable state law in determining a claimant's covered employment and wages. This includes G.L. c. 151A, § 3(a), which provides, in pertinent part, as follows:

Section 3. The term "employment", except in such cases as the context of this chapter otherwise requires, shall include an individual's entire service, performed within, or both within and without the commonwealth, if—

(a) the service is localized in the commonwealth. Service shall be deemed to be localized within the commonwealth if the service is performed entirely within the commonwealth, or the service is performed both within and without the commonwealth, but the service performed without the commonwealth is incidental to the individual's service within the commonwealth; for example, is temporary or transitory in nature, or consists of isolated transactions.

(b) the service is not localized in any state, but some part of the service is performed in the commonwealth and (1) the individual's base of operations is in the commonwealth or, if there is no base of operations, then the place from which such service is directed or controlled, is within the commonwealth, or (2) the individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in the commonwealth.

The claimant in this case is an independent contractor who worked from her home in Kentucky and then South Carolina for a nation-wide nursing agency based out of Massachusetts. Findings of Fact ## 4 and 6. Because she was physically located in Kentucky and South Carolina, none of the wage-earning services she performed for the nursing agency were performed in Massachusetts. Finding of Fact # 6. As such, the claimant was not working in Massachusetts at the time she became unemployed, partially employed, or unable or unavailable to work because of the COVID-19 public health emergency.

We, therefore, conclude as a matter of the law that pursuant to the CARES Act and G.L. c. 151A, § 3, the claimant has failed to meet her burden to show she qualifies to file a PUA claim in Massachusetts.

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



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 4, 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

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.

LSW/rh