

The claimant ran a photography business in Massachusetts. Several of her clients canceled their sessions and she saw a substantial decrease in business thereafter as a result of the public health restrictions implemented as a result of the pandemic. Because the COVID-19 pandemic substantially impaired her ability to perform her Massachusetts work, she is eligible for PUA benefits.

**Board of Review
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**Paul T. Fitzgerald, Esq.
Chairman
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Michael J. Albano
Member**

Issue ID: N6-FJV9-9K3M

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 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 9, 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, 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 information about the claimant's work in 2020. 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 did not present sufficient documentary evidence to show she was working in Massachusetts in 2020 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 consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. The claimant filed a claim for PUA benefits, effective date of 3/15/2020.
2. The claimant filed her PUA claim from a New Hampshire address.

3. In 2019 and 2020, the claimant worked as a professional photographer at a studio in Massachusetts.
4. The claimant has 2019 state and federal tax returns including the Schedule C for her photography business. The Schedule C shows receipts of \$37,991 and a net profit for the year.
5. The claimant has 2020 state and federal tax returns including the Schedule C for her photography business. The Schedule C shows receipts of \$7,374 and an operating loss for the year.
6. The claimant has a lease for a studio in Massachusetts. The term of the lease is November 1, 2019 to October 31, 2020. The claimant maintained the lease for the full term and made improvements to the studio to address COVID-19 health safety concerns. These improvements included, but were not limited to, installing an air purification system. At the end of the term, the claimant executed a new lease in the same address.
7. The claimant operated her photography business throughout 2020, including from January through May 1, 2020.
8. After the start of the COVID-19 public health emergency, the claimant's workload was reduced significantly due to the social distancing restrictions implemented to address public health concerns.
9. The claimant has records from March of 2020, showing that clients requested photography sessions in the spring of 2020. She also has paid invoices from January 2020 through approximately April of 2020, showing the services she provided to the clients.
10. Some sessions that had been scheduled prior to the public health emergency were cancelled and many of the sessions the claimant's schedule for the remainder of 2020 (after the spring) had to be performed outside to address concerns of herself and her clients related to transmission of the virus.

Credibility Assessment:

During the remand hearing, the claimant and her husband offered credible testimony regarding the claimant's business and how the COVID-19 public health emergency affected it. She provided credible documentation, including scheduling requests, invoices, business expenses, and her tax documentation, showing that the business was active in early 2020 and was negatively affected by the COVID-19 pandemic. Furthermore, the testimony as to how COVID-19 affected the photography business was deemed credible, as it is likely that clients and the claimant would have been reticent to conduct in-person photography sessions, given the ongoing COVID-19 public health emergency in 2020.

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 failed to show that she was working in Massachusetts when her work was impacted by the COVID-19 pandemic.

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 they were "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.

The claimant works as a professional photographer out of her studio in Massachusetts. Consolidated Finding # 3. Several of the claimant's clients canceled their sessions following the outbreak of the COVID-19 pandemic, and the claimant subsequently saw a substantial decrease in business as a result of restrictions implemented in response to the pandemic. Consolidated Findings # 8–10.

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 the listed COVID-19 reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

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

² See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL)16-02, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

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



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 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

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