

**Rhode Island resident established that her work for a law firm in Massachusetts stopped for nine weeks, when it shut down because the Commonwealth determined it to be a non-essential business. She is eligible for PUA benefits.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: N6-FJV9-KNR4**

### 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 benefits with the DUA, effective April 1, 2020, which was denied in a determination dated November 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 March 10, 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 for additional evidence about the claimant's employment in Massachusetts. 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 had not proven that she was working in Massachusetts in 2020, and therefore not eligible to receive PUA benefits from Massachusetts, 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 29, 2020.

2. The claimant filed using a Rhode Island address.
3. In 2019 and 2020, the claimant provided bookkeeping services for the law firm of [Name A], located in [City A], MA.
4. The claimant's husband was a part owner of the law firm. When he passed away in 2012, the ownership interest transferred to the claimant.
5. The claimant performed services for pay at the law firm in 2019 and during the first three months of 2020.
6. The claimant stopped working for the law firm from March 20, 2020 to May 26, 2020. The law office closed as it was deemed a non-essential business under the COVID-19 health guidelines issued by the Commonwealth of Massachusetts.
7. The claimant was not issued a W-2 or 1099 by the law firm. As a person with an ownership interest in the firm, she was issued a K-1.
8. The claimant filed a 2020 Massachusetts Form 1-NR/NY. The Schedule E indicates NonPassive Income of \$57,794.
9. The claimant filed a 2020 federal Form 1040. The 2020 Schedule E shows Non-Passive Income from the law firm (from the Schedule K-1) of \$57,794.
10. The claimant filed a 2019 Massachusetts Form 1-NR/NY. The Schedule E indicates Non-Passive Income of \$28,889.
11. The claimant filed a federal 2019 1040-SR. The 2019 Schedule E shows Non-Passive Income from the law firm (from the Schedule K-1) of \$28,889.
12. The claimant pays quarterly taxes to the Commonwealth of Massachusetts.
13. On November 11, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination (COVID-19 Eligibility) informing her that she was not eligible to receive benefits.
14. The claimant appealed the determination.

Credibility Assessment:

During the hearing, the claimant's documentation was entered into evidence. Her testimony about her tax returns was credible, and findings of fact were made regarding those documents. The claimant's testimony in response to the Board's questions was credible, precise, and consistent throughout the hearing. The Remand exhibits and other documentation submitted were authentic and supported her testimony. Her testimony concerning her relationship with the firm and why she

received a K-1 rather than a W-2 or 1099 was credible and supported by her tax filings

### 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. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for PUA benefits in Massachusetts.

The claimant in this case seeks PUA benefits, an 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 out for work 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."<sup>2</sup> 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.<sup>3</sup> As a resident of Rhode Island, the claimant would need to establish that the work she lost due to the pandemic was in Massachusetts in order to receive benefits from Massachusetts.

The claimant has demonstrated that she was working in Massachusetts and that this work had been interrupted by the pandemic. The claimant had been working at a [City A] law firm when the public health emergency began and had performed services for pay at the firm in early 2020. *See* Consolidated Findings ## 3 and 5. The claimant stopped work on March 20, 2020, because the firm was deemed a nonessential business pursuant to Commonwealth of Massachusetts health guidelines. She did not resume working until May 26, 2020. *See* Consolidated Finding # 6.

The record now shows that the claimant was unemployed from her work in Massachusetts because the COVID-19 public health emergency severely limited her ability to continue performing her customary work activities and thereby forced her to suspend such activities.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was unemployed for a listed reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 22, 2020, through May 23, 2020, if otherwise eligible.

---

<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. I-3.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 30, 2021**



Paul T. Fitzgerald, Esq.  
Chairman



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.

MS/rh