

Business owner, who lived in Connecticut, showed that he experienced a significant diminution of services in Massachusetts starting in March 2020 as a result of the COVID-19 restrictive protocols. He further showed that he had to stop performing his services when his office was closed as a non-essential business in March 2020. He is eligible for PUA benefits during that period.

**Board of Review
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Issue ID: N6-FJV9-KPF7

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 March 15, 2020, which was initially approved. However, in a determination issued on November 12, 2020, the claimant was denied benefits. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's determination to deny PUA benefits in a decision rendered on February 26, 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 he 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 of the claimant's 2020 work history. 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 had failed to show that the COVID-19 public health emergency substantially diminished his self-employment work providing document copying services in Massachusetts in 2020, 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.
2. The claimant, a Connecticut resident, filed the PUA claim using a Connecticut address.
3. Since 1998, the claimant has owned and operated a Massachusetts company which provides large scale confidential document scanning services to a Massachusetts government agency (Agency), in addition to other clients.
4. The claimant has a signed contract with the Agency beginning January 22, 2016, through January 31, 2019, which was renewed on December 21, 2018.
5. The claimant has a signed contract with the Agency beginning January 1, 2019, through June 30, 2022.
6. Per the contract, between fifty to sixty times a month, the company collected confidential documents, at the Agency's regional offices, and scanned them electronically so that the documents could be provided to outside counsel.
7. The Agency comprised approximately sixty-eight percent of the company's business.
8. From January 1, 2018, to December 31, 2018, the claimant provided the Agency with \$74,450.65 worth of services and received \$68,902.
9. From January 1, 2019, to December 31, 2019, the claimant provided the Agency with \$63,957 worth of services and received \$63,024.
10. Beginning in March 2020, when the Agency's regional offices closed due to the COVID-19 public health emergency, the company went from fifty to sixty pickups a month to five, and then only emergency cases directly referred by the regional office directors.
11. From January 1, 2020, to December 31, 2020, the claimant provided the agency with \$18,551 in services and received \$16,800.
12. In 2020, the claimant lost approximately \$65,000 in revenue as a result of losing the Agency's business.
13. On March 24, 2020, the office building where the company was located closed due to the COVID-19 public health emergency mandatory non-essential business closures.
14. On March 24, 2020, without access to its office, the claimant's company closed.

15. The claimant's company provided scanning services for three of the largest law firms in the city, which operated out of the same office building as the claimant's company. When the building closed, the firms shut down on-site services including scanning services.
16. In March 2020, the company had three contracts with two cities and a hospital to digitize records that were placed on hold because of insufficient staffing at the facility or funding shortfalls due to the COVID-19 pandemic.
17. Due to the sensitive nature of the documents, and with its office closed, the company could not provide scanning services remotely.
18. The claimant lost approximately \$200,000 in revenue from non-Agency clients.
19. The claimant has not recovered the work that he lost from the Agency because most regional offices remain closed and the few that have opened are at half-capacity.
20. In September 2021, the company collected documents from the Agency's regional office three times.
21. The Agency has informed the claimant that all regional offices will be fully opened in January 2022.
22. The claimant has a certification from the Massachusetts Secretary of the Commonwealth dated December 1, 2015, which confirms the company's 1998 registration in Massachusetts and [lists] the claimant as President.
23. The claimant has the company's Massachusetts lease which was first signed in 2003 and renewed in February 2019.
24. The claimant has a 2019 Massachusetts Nonresident/Part-Year Resident Income Tax Return which includes a Schedule E-2 for the claimant's business.
25. The claimant has a 2019 Connecticut tax return which lists the business' 2018 and 2019 gross income.
26. On November 13, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination informing him that he was not eligible to receive benefits beginning the week ending February 8, 2020.
27. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant credibly testified that his business was negatively affected by the COVID-19 public health emergency. In support, of his credible testimony, the claimant has submitted his active contract with the Agency and his 2018, 2019 and 2020 Agency payment ledgers. The ledgers demonstrate a significant decline in work, and therefore revenue, originating from the Agency. Furthermore, the claimant credibly testified that in addition to Agency work, three major scanning projects were placed on hold due to the COVID-19 public health emergency. In support of his testimony, the claimant submitted March 2020 email correspondence regarding a contract to scan records for a Massachusetts city. In addition, the claimant provided multiple notices from his landlord regarding the office building's closure on March 24, 2020, due to the pandemic. The claimant credibly testified that without access to his office, he was forced to shut down his company. Given the nature of the claimant's work, particularly the sensitive nature of the documentation, services could not be provided remotely.

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 is not eligible for PUA benefits.

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 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."² Even if not suspended, a significant diminution of a claimant's customary or usual services due to the pandemic has also been determined to constitute an approved COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(kk).³ Additionally, an individual will be eligible under § 2102(a)(3)(A)(ii)(I)(jj), if the individual's place of employment is closed as a direct result of the COVID-19 public health emergency.⁴ A claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.⁵

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

² U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(k), p. I-6.

³ See UIPL 16-20, Change 6 (Sept. 3, 2021), Attachment I, (kk)(1), p. I-3 – I-4.

⁴ See UIPL 16-20 (Apr. 5, 2020), Attachment I, C(1)(j), p. I-6

⁵ See UIPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

Therefore, in order to be eligible for benefits, the claimant must show that he had work in Massachusetts that was negatively impacted by the COVID-19 pandemic.

The consolidated findings provide that the claimant, a resident of Connecticut, owns and operates a Massachusetts-based business that provides large-scale scanning services for organizations that handle confidential documents, including a Massachusetts government agency (Agency). *See Consolidated Findings ## 2, 3 and 22.* The claimant's work for the Agency accounted for approximately sixty-eight percent of the claimant's business, and he was under contract to provide services to the Agency beginning January 1, 2019, through June 30, 2022. *See Consolidated Findings ## 5 and 7.* Per the contract, between fifty and sixty times per month the claimant would travel to the Agency's regional offices throughout Massachusetts to collect confidential documents which were then taken to the company for electronic scanning and distribution to outside counsel. *See Consolidated Finding # 6.*

They further provide that, in March of 2020, the Agency's regional offices closed due to the COVID-19 public health emergency, and the claimant's services were only used in emergency cases. This resulted in the claimant making five document pickups per month instead of the usual fifty to sixty. *See Consolidated Finding # 10.* The reduction in business services for the Agency caused the claimant to lose approximately \$65,000 in revenue. *See Consolidated Finding # 12.* In all of 2020, the claimant only received \$16,800 for services provided to the Agency, a significant reduction compared to the \$68,902 and \$63,024 his company made from services provided to the Agency in 2018 and 2019, respectively. *See Consolidated Findings ## 8, 9, and 11.* The claimant's Agency work continued to suffer throughout 2021, as the Agency's regional offices were still closed or operating at reduced capacity and were not scheduled to return to previous levels of operation until January, 2022. *See Consolidated Findings ## 19–21.*

Moreover, the claimant had contracts with two Massachusetts cities and a hospital to digitize confidential records prior to the start of the COVID-19 public health emergency, and those contracts were put on hold due to insufficient staffing at the hospital and funding shortfalls when the public health emergency went into effect. As a result, the claimant's company lost approximately \$200,000 in non-Agency revenue. *See Consolidated Findings ## 16–18.*

This evidence demonstrates that the claimant owned and operated a Massachusetts-based business that experienced a significant diminution of services that lasted from March 15, 2020, until September, 2021.

In addition to the loss of business with the Agency, cities, and a hospital, the claimant also lost work due to the closure of the office building where his company was located, which occurred on March 24, 2020, in response to the Governor's COVID-19 directive deeming it a non-essential business. *See Consolidated Findings ## 13–16.* Due to the closure of the office as well as the sensitive nature of the confidential documents, the claimant was unable to operate his business remotely. *See Consolidated Finding # 17.* This evidence demonstrates that the claimant's place of employment was closed as a direct result of the COVID-19 public health emergency.

We, therefore, conclude as a matter of law that the claimant has met his burden to demonstrate an inability to perform his usual services for listed CARES Act reasons under §§ 2102(a)(3)(A)(ii)(I)(kk) and 2102(a)(3)(A)(ii)(I)(jj).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 14, 2020, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 29, 2022



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

RG/rh