

**The claimant was unemployed due to one of the reasons listed in the CARES Act, as she had to close her massage business pursuant to the Governor’s COVID-19 emergency executive order.**

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

**Issue ID: N6-FJV9-MN5F**

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 8, 2020, which was denied in a determination issued on 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 February 19, 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 obtain additional evidence pertaining to the claimant’s employment status in 2020. 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 did not present sufficient evidence to show that she was out of work due to an approved COVID-19 related reason, 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 Pandemic Unemployment Assistance (PUA), which was determined to be effective March 08, 2020.

2. On November 16, 2020, the Department of Unemployment Assistance (DUA) issued a Notice of Non-Monetary Issue Determination—COVID-19 Eligibility to the claimant, stating that she was not eligible for PUA benefits.
3. Prior to filing for benefits, the claimant was an owner of a massage parlor.
4. The claimant's massage therapy business was operating before and at the beginning of March, 2020.
5. The claimant's massage parlor was closed in March of 2020, due to governmental regulations implemented as a result of the COVID-19 emergency.
6. The claimant appealed the November 16, 2020 determination.

#### Credibility Assessment:

The claimant's testimony that she owns the massage parlor is credible, as she provided a 2018 and a 2020 Certificate of Insurance for her business and a Business Certificate issued on September 27, 2017, with the expiration date of September 27, 2021. All certificates have the claimant's name on them to support ownership of the company. Additionally, the claimant provided an electric bill for February, 2020 to show that the company was open prior to the business's closure in March, 2020. Although she did not have any tax documents to support her self-employment in 2020, the claimant provided their 2019 taxes with a Schedule C to support the continuous ownership of her massage parlor. The claimant was responsive and non-evasive throughout the hearing, and her testimony is reasonable that a massage parlor would be closed due to governmental regulations implemented as a result of the COVID-19 emergency in March, 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 did not show she was unemployed as a result of 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.<sup>1</sup> 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

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

Labor in accordance with § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act, is that an individual will be eligible for PUA benefits if her “place of employment is closed as a direct result of the COVID-19 public health emergency.” See also U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(j), p. I-6.

The review examiner found that the claimant owns a massage therapy business in Massachusetts. The review examiner also found that the claimant was working for her business in March, 2020, when she was required to close the business in accordance with the executive orders issued as a result of the COVID-19 public health emergency. Based on these findings, we believe the claimant has shown that she was unemployed in 2020 as a direct result of the COVID-19 emergency, as stated under § 2102(a)(3)(A)(ii)(I)(jj).

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was out of work due to the listed COVID-19 reason under § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act.

The review examiner’s decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 8, 2020, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 13, 2021**



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](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.

SVL/rh