

The claimant had to stop performing his services delivering lost luggage for airline passengers when he was laid off due to the cancelling of flights in response to the COVID-19 public health emergency. He is entitled to PUA benefits.

**Board of Review
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Issue ID: N6-FJV9-VV22

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 affirm in part and reverse in part.

The claimant filed a claim for PUA benefits with the DUA, effective February 9, 2020, which was denied in a determination issued on November 2, 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 8, 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 in Massachusetts 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 concerning the claimant's work and reason for losing that work in February, 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 show that he performed lost luggage delivery services in Massachusetts in 2020 or that he stopped working due to the COVID-19 public health emergency at the time he filed his claim, 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. From 2019 through February 14, 2020, the claimant was self-employed, working as a courier delivering recovered luggage to customers that was lost by the airlines which fly out of [A] Airport in [City A], Massachusetts.
2. The claimant obtained work through a courier service company.
3. The claimant was out of work for ten days, from December 23, 2019, to January 4, 2020, when he returned to work. Although he was self-employed, the claimant, if out of work due to sickness, was required to submit medical or hospital records to the courier company. The claimant did not present any medical records to the courier company that he was sick during this time with a respiratory illness, flu-like symptoms, or COVID-19.
4. In January of 2020, the claimant worked his regular full-time shifts of 40 to 50 hours per week delivering recovered luggage.
5. In February of 2020, the claimant's hours declined to 30 to 40 hours per week, due to fewer flights utilizing [A] Airport, because of COVID-19.
6. On February 14, 2020, the claimant was laid off from his job as a courier due to COVID-19. International flights in and out of [A] Airport were cancelled due to COVID-19. Domestic flights at Logan Airport were reduced by 80%. The courier company that contracted with the claimant was forced to lay off the majority of its staff in February of 2020, due to the pandemic.
7. The claimant has not returned to work since February 14, 2020.
8. The claimant filed a claim for PUA benefits, with an effective date of February 9, 2020, and a weekly benefit rate of \$267.00. The claimant filed the claim using a Rhode Island address, where he resides.
9. The claimant filed his 2019 taxes in both Massachusetts and Rhode Island. The claimant's 2019 gross earnings, as indicated on the 1099 from the courier service company, was \$34,126.68.
10. On August 31, 2020, the Department of Unemployment Assistance sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive PUA benefits beginning the week ending February 8, 2020.
11. The claimant appealed the determination.

Credibility Assessment:

At the remand hearing, the manager of the courier service, who had not testified during the original hearing, credibly testified that the claimant worked for this company,

reported to work daily in [City A], Massachusetts, and that the claimant's work was negatively affected by the COVID-19 pandemic.

At the original hearing, the claimant testified that he became very sick in November of 2019, while at work. The claimant testified that he was hospitalized for a period of time due to a severe illness that the claimant believed was COVID-19. The claimant originally testified that he left work sick in November of 2019 and did not return to work at all for the rest of 2019 or 2020. However, during the remand hearing, the claimant testified that at the time of the original hearing, he was taking medication for an underlying medical issue, and that the medication caused the claimant to become confused and to have memory issues. The claimant credibly explained that he worked until February 14, 2020, when he was laid off from his job due to COVID-19 related reasons. The claimant's testimony is credible because it is corroborated by the testimony of the company manager and the documentation in the record.

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.

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 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.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.

Although the claimant is a resident of Rhode Island, he customarily performed services delivering airlines' recovered luggage, which he would pick up from an airport in Massachusetts. *See* Consolidated Findings ## 1 and 8. He performed these services from 2019 until February 14,

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* IPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

2020. *See* Consolidated Finding # 1. These findings establish that the claimant was working in Massachusetts and became unemployed at the time he filed his PUA claim.

During the initial hearing, the claimant indicated that he stopped working due to illness. However, after remand, the consolidated findings now clarify that the claimant did not stop working due to illness, but because he was laid off. Specifically, he was laid off on February 14, 2020, because international flights in and out of the airport were cancelled and domestic flights had been reduced by 80% due to the pandemic. *See* Consolidated Finding # 6. Since the reason he had to stop performing his customary services is directly related to the COVID-19 public health emergency, the claimant has demonstrated that he was unemployed for a listed reason under the CARES Act.

The claimant's layoff was on a Friday, February 14, 2020. Because he had worked most of that week, we must decide whether he was eligible for benefits during the week beginning February 9, 2020, the effective date of his claim. Consolidated Findings ## 4 and 5 provide that in January, 2020, the claimant regularly worked 40–50 hours per week and in February, 2020, those hours declined to 30–40 hours per week. That is a 20–25% drop in service hours. As Consolidate Finding # 5 indicates, this was because flights were being cancelled in response to the spread of the COVID-19 virus. Pursuant to CARES Act, § 2102(a)(3)(A)(ii)(I)(kk), the U.S. Secretary of Labor has authorized an additional reason for PUA eligibility to be a self-employed individual who experienced a significant diminution of his customary or usual services because of the COVID-19 public health emergency, even absence a suspension of services.⁴ We think a 20–25% drop in services constitutes a significant diminution of services.

That said, the claimant is required to report all earnings in each week that he claims benefits, and he will not be entitled to any PUA benefits if, in that week, he earned more than the sum of his weekly benefit amount plus earnings disregard. *See* G.L. c. 151A, § 1(r)(1). The claimant's weekly benefit amount is \$267.00. *See* Consolidated Finding # 8. His earnings disregard is one-third of that amount, \$88.11. *See* G.L. c. 151A, § 29(b). Thus, he is not entitled to partial PUA benefits in any week that he earned \$355.11. Remand Exhibit 5 includes work logs for the week beginning February 9, 2020, which show that, despite his reduction in services, the claimant still earned well over \$355.11.⁵ Thus, he is not entitled to any PUA benefits during this week.

We, therefore, conclude as a matter of law that the claimant has shown that he was out of work for a listed CARES Act reason under § 2102(a)(3)(A)(ii)(I)(kk).

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive PUA benefits for the week beginning February 16, 2020, and for subsequent weeks if otherwise eligible.

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

⁵ While not explicitly incorporated into the review examiner's findings, the weekly logs in Remand Exhibit 5 are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 29, 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

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.

AB/rh