

The claimant could not start work in MA in 2020 due to the restrictions in place as a result of COVID-19, and he remained out of work because he is high-risk for COVID-19 complications. Thus, he was unemployed due to reasons listed in the CARES Act, § 2102(a)(3)(A)(ii)(I)(ff) and (gg).

**Board of Review
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Issue ID: N6-FJVD-3TP8

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 29, 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 11, 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 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 he was out of work due to an approved COVID-19 related reason when he could not perform his basketball coaching services, 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, a North Carolina resident, filed the PUA claim using a North Carolina address.
3. Since 2014, the claimant has worked as an independent contractor coaching boys' basketball for a Massachusetts company (hereinafter "School") in Massachusetts. The claimant has tax documentation for 2014 through 2019, which show he was an independent contractor for the School and paid Massachusetts taxes as a non-resident/part-year resident.
4. The claimant's 1099 tax documents, filled in by hand, list the School as the payer and show that the claimant made ten thousand and five hundred dollars (10,500) for 2017, five thousand and five hundred dollars (5,500) in 2018, and nine thousand and nine hundred dollars (9,900) in 2019.
5. The claimant would have worked in Massachusetts in 2020 and 2021, if not for the state mandated school closures and travel restrictions arising from the COVID-19 public health emergency.
6. The claimant filed his claim for PUA benefits in June 2020.
7. 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.
8. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant credibly testified that he would have returned to work, coaching youth basketball, on March 10, 2020, but due to the Covid-19 pandemic public health emergency state-mandated quarantine restrictions, all in-person practices/games were cancelled until November 2020. In support, of his credible testimony, the claimant has a letter from his employer, dated March 1, 2021, which states that the claimant was supposed to start work on March 10, 2020, but could not due to the pandemic. In addition, the claimant provided multiple emails that were sent to the enrolled athletes, which list the claimant as the intended Coach. However, although the school's in-person sessions reopened in November 2020, the claimant credibly testified that he cannot travel to Massachusetts because he is at high risk for the COVID-19 virus. In support of his testimony, the claimant has a note from his doctor, which states that the claimant is at high-risk for COVID-19. In addition, the claimant is the primary caregiver for his spouse, who tested positive for COVID-19 on July 29, 2020. As further verification of his spouse's illness, the claimant provided his spouse's positive COVID-19 test. However, the claimant credibly testified that he has already received his first vaccination and intends to return to coaching once he is fully vaccinated.

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 he 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.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 is § 2102(a)(3)(A)(ii)(I)(gg) of the CARES Act, which provides that a covered individual will be eligible for PUA benefits if he was "scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency."

The claimant is a coach for a boys' basketball program in Massachusetts, and he's been working for this program since 2014. The program runs for several seasons throughout the year, and prior to filing his PUA claim, the claimant was scheduled to start working on March 10, 2020. However, the claimant was unable to commence his employment in March due to the school closures and travel restrictions arising from the COVID-19 public health emergency. These facts demonstrate that the claimant was unemployed for the listed COVID-19 CARES Act reason under § 2102(a)(3)(A)(ii)(I)(gg).

Additionally, when the basketball program began operating again in November, 2020, the claimant was unable to resume his coaching duties, because he is a high-risk individual for complications from a COVID-19 infection. Although not in the consolidated findings, the review examiner's credibility assessment refers to a note from the claimant's doctor confirming that his health condition poses such high risk. A different provision of the CARES Act, § 2102(a)(3)(A)(ii)(I)(ff), lists as a COVID-19 related reason, "the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19." The U.S. Secretary of Labor has interpreted this provision to apply to "an individual whose immune system is compromised by virtue of a serious health condition and is, therefore, advised by a health care provider to self-quarantine in order to avoid the greater-than-average health risks that the individual might face if he or she were to become infected by COVID-19." U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1)(ff), p. I-7. We believe this provision, as interpreted by the U.S. Secretary of Labor, applies to the claimant's circumstances. Thus, he remained unemployed for a listed COVID-19 reason when the basketball season re-opened in November, 2020.

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

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he was out of work in Massachusetts for eligibility reasons under § 2102(a)(3)(A)(ii)(I)(ff) and (gg) of the CARES Act.

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 29, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 6, 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.

SVL/rh