

Claimant's testimony, letters from her employer, and timecards established that she had employment in Massachusetts that was affected by COVID-19, when the facility where she worked had to be locked down twice due to positive COVID-19 tests, forcing the claimant out of work for those weeks. She is eligible for PUA benefits.

**Board of Review
19 Staniford St., 4th 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-FJVD-6JP6

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, which was made effective April 12, 2020. Although initially approved, the DUA subsequently denied the claimant benefits in a determination issued on November 17, 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 benefits in a decision rendered on February 12, 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 had been working in Massachusetts when she became 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 afford the claimant an opportunity to submit additional evidence to show that she had been working in Massachusetts in 2020. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact and credibility assessment. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's original decision, which concluded that the claimant, a Rhode Island resident, did not submit sufficient documentary evidence to show that she had been working in Massachusetts at the time she became unemployed due to the COVID-19 public health emergency, 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) with an effective date of April 12, 2020.
2. The claimant filed the PUA claim with a Rhode Island address.
3. The claimant began working at a Massachusetts employer on October 15, 2019. The employer is an educational facility for people with developmental disabilities.
4. The claimant has a 2020 W-2 Wage and Tax Statement from her employer addressed to her showing \$4,589.19 in wages, tips, and other compensation.
5. On April 17, 2020, the facility where the claimant worked was closed due to a positive COVID-19 test. The facility was placed on lockdown and no one could enter the facility to work unless they remained in the facility twenty-four hours a day, seven days a week with the other residents.
6. The claimant was unable to work until the lockdown was lifted on June 15, 2020. The claimant continued to work until June 29, 2020, when another lockdown occurred, due to another positive COVID-19 test, with the same guidelines as the April 17, 2020, lockdown.
7. The claimant was unable to work until the second lockdown was lifted on July 21, 2020.
8. The claimant has been working continuously for the employer since July 21, 2020, including in 2021.
9. The claimant was not able to work due to the facility lockdown from April 17, 2020, through June 14, 2020, and then again from June 29, 2020, through July 20, 2020.
10. On November 17, 2020, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive benefits beginning the week ending February 8, 2020. She was informed that she was not eligible to receive benefits, because she failed to respond with the appropriate documentation by the due date.
11. The claimant timely appealed the November 17, 2020 Notice of Non-Monetary Issue Determination.

Credibility Assessment:

The claimant and her documentation are deemed to be credible. The claimant's testimony is corroborated by the documentation that she presented for the remand

hearing. The claimant was unable to bring a representative or witness, as the employer is short-staffed due to the COVID-19 public health emergency.

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, based on the consolidated findings and as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for PUA benefits on her Massachusetts claim.

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 she 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 she had work in Massachusetts that was impacted by the COVID-19 pandemic.

The claimant is a resident of Rhode Island. *See Consolidated Finding # 2.* During the initial hearing, she testified that she had to stop working in Massachusetts due to the COVID-19 public health emergency. However, because she did not submit documentary evidence to support that testimony, the review examiner concluded that the record lacked substantial evidence to show that she was eligible to file a PUA claim in Massachusetts. We remanded the case for the review examiner to consider additional documents showing her work in Massachusetts in 2020.

After remand, the record in this case includes substantial evidence, including both sworn testimony and documents, which establish that the claimant was twice forced to stop performing work in Massachusetts due to the COVID-19 public health emergency. This evidence is now captured in the consolidated findings.

The claimant began working in Massachusetts for an educational facility for people with developmental disabilities on October 15, 2019. *See Consolidated Finding # 3 and Remand*

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.

Exhibits ## 8 and 19. She was forced to stop performing her services on April 17, 2020, when her employer was forced to place the facility where the claimant worked on lockdown due to a positive COVID-19 test, meaning no one could enter the facility to work unless they remained there 24 hours a day, seven days a week with the residents. *See Consolidated Finding # 5.*

The claimant could not return to work until the lockdown was lifted on June 15, 2020. However, due to another positive COVID-19 test, the employer imposed a second lockdown from June 29 through July 21, 2020. *See Consolidated Findings ## 6–7.* Since the second lockdown was lifted on July 21, 2020, the claimant has worked continuously for the employer. *See Consolidated Findings ## 8–9.* The claimant’s timecards establish that she was out of work during these periods. *See Remand Exhibit # 11.*

The review examiner provided a credibility assessment confirming that the claimant had work in Massachusetts that was interrupted by COVID-19, noting that she corroborated her testimony with documentation. Such assessments are within the scope of the fact finder’s role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). The record supports the review examiner’s assessment.

The claimant has satisfied the eligibility criteria under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. She has shown that she was unemployed 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. She has also met her burden to show that she is eligible to file a PUA claim in Massachusetts, because she was performing her services here at the time she became unemployed.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was out of work in Massachusetts for one of the eligibility reasons established by the U.S. Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

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 April 19, 2020, through the week ending June 13, 2020, and from the week beginning June 28, 2020, through the week ending July 18, 2020, if otherwise eligible. The claimant is not otherwise entitled to receive PUA benefits.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 6, 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.

JPCA/rh