

**The claimant is a New Hampshire resident who operated a hair salon in Massachusetts. She demonstrated that, because the state forced her to close her salon for a period of time due to the COVID-19 public health emergency, she was out of work for a listed COVID-19 reason under CARES ACT § 2102(a)(3)(A)(ii)(I)(jj).**

**Board of Review  
19 Staniford St., 4<sup>th</sup> 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-H4DM**

### 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 March 8, 2020, which was denied in a determination issued on September 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 25, 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 consider additional evidence and to address inconsistencies in the record. The claimant attended the remand hearing. Thereafter, the review examiner issued his 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 not performed services in Massachusetts that were affected by the COVID-19 public health emergency within the meaning of the CARES Act, is supported by substantial and credible evidence and is free from error of law, where, after remand, the claimant has demonstrated that she was the operator of a Massachusetts business that had to shut down in March, 2020.

### Findings of Fact

The review examiner's consolidated findings of fact are set forth below in their entirety:

1. The claimant filed a claim for PUA benefits, with an effective date of March 8, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. The claimant worked in 2019 and early 2020 in the haircutting salon at [Address A], Massachusetts. She has owned the salon since October 2000. The name of the salon is [Name A]. Customers paid for the claimant's services by cash or personal check.
3. The salon was open and operating for all of January and February 2020 and the first days of March 2020. With the onset of the COVID-19 pandemic, the claimant was ordered by the state to close her salon on March 7, 2020. The salon reopened on May 26, 2020.
4. The claimant filed her PUA claim when she was unable to open her salon.
5. On September 16, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, COVID-19 Eligibility, informing her that she was not eligible to receive benefits beginning the week ending February 8, 2020.
6. The claimant appealed the DUA's determination.

### 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. 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.<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 requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that she is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). A listed reason under § 2102(a)(3)(A)(ii)(I)(jj), is that the individual's place of employment is closed as a direct result of the COVID-19 public health emergency. Additionally, because the claimant is a New Hampshire resident, she must show that she became unemployed in Massachusetts in order to be eligible to file a claim in Massachusetts.

At the original hearing, the claimant did not provide any documentation to support that she was operating a business in Massachusetts. After remand, the consolidated findings now provide that the claimant, who lived in New Hampshire, was a self-employed hairdresser in Massachusetts.

---

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

She worked in 2019 and early 2020 in a haircutting salon in [Town A], Massachusetts. The claimant has owned the salon since October 2000. See Consolidated Findings of Fact # 2. They further provide that the salon was open and operating for all of January and February 2020 and the first days of March 2020, but with the onset of the COVID-19 pandemic, the claimant was ordered by the state to close her salon on March 7, 2020. The salon reopened on May 26, 2020. See Consolidated Finding of Fact # 3. The claimant filed her PUA claim when she was unable to open her salon. See Consolidated Finding # 4.

Because the claimant has shown that her place of employment was closed as a direct result of the COVID-19 public health emergency, she has established that she is unemployed for a COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(jj).

We, therefore, conclude as a matter of law that that the claimant has shown that she was unable to work in Massachusetts for the reason listed under the CARES Act, § 2102(a)(3)(A)(ii)(I)(jj).

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 March 8, 2020, through May 23, 2020, if otherwise eligible.

**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](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.