

The claimant, a college student, lost his part-time job when his school shut down in March, 2020 due to the COVID-19 public health emergency. He further demonstrated that, if not for the pandemic, the college intended to employ him after the end of the school year through the summer. He is eligible for PUA benefits under the CARES Act during the entire period, March – August 30, 2020.

**Board of Review
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Issue ID: N6-FJVF-6FTD

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), which denied Pandemic Unemployment Assistance (PUA) benefits during certain weeks of his claim on the ground that the claimant did not show that, during that period, he was unemployed due to the COVID-19 public health emergency.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020, which was initially approved. However, in a determination issued on September 16, 2020, the DUA disqualified the claimant due to his failure to provide documentation. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's initial determination. In a decision rendered on January 27, 2021, the review examiner awarded PUA benefits from March 15 through May 16, 2020, but denied benefits thereafter. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On May 17, 2021, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to consider additional evidence as to whether the claimant's college employer would have continued to employ him beyond May 10, 2020, but did not due to the COVID-19 public health emergency. Following a remand hearing, the review examiner issued his consolidated findings of fact.

This issue before the Board is whether the review examiner's original decision, which concluded that the claimant failed to show that he would have continued working beyond the end of his college semester, is supported by substantial and credible evidence and is free from error of law in light of the new evidence presented from his college employer.

After reviewing the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we affirm in part and reverse in part the review examiner's original decision.

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 for [sic] Pandemic Unemployment (PUA) claim, effective March 15, 2020.
2. On September 16, 2020, the Department of Unemployment Assistance (DUA) issued 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. He was informed that he was not eligible to receive benefits, because he failed to respond with the appropriate documentation by the due date.
3. The claimant filed the claim using a New Jersey address.
4. The claimant was enrolled at a college in [City A], Massachusetts. The claimant lived on campus.
5. Prior to the pandemic, in early 2020, the claimant was working at his college's equipment distribution center. He worked at the distribution center since 2018.
6. The claimant did not work at the distribution center during the summer of 2019.
7. On March 16, 2020, the claimant's school closed because of the COVID-19 emergency. The claimant had to stop working and return to New Jersey.
8. The claimant has paystubs from September 2019 to May 2020. Beginning in March of 2020, the college paid the claimant \$89.00 per week gross, because he could no longer work on campus.
9. After the end of the spring semester, the claimant would have worked at the distribution center until August 30, 2020.
10. From September 2020 until December 2020, the claimant studied in Los Angeles, California.

Credibility Assessment:

The claimant provided credible testimony and documentation showing that he was scheduled to work at the distribution center during the summer of 2020. In support of his testimony, the claimant provided a letter from the college's student employment coordinator, stating that absent the pandemic, the claimant would have been offered employment at the college's distribution center from May 11, 2020, until August 30, 2020. The claimant credibly testified that he intended to work at

the distribution center during the summer of 2020, but the COVID-19 pandemic altered those plans.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. Consolidated Finding # 8 provides that the claimant's college paid him \$89.00 per week gross wages beginning in March of 2020. More accurately, Exhibit 6, which includes paystubs from the relevant period, show that he was paid \$89.25 per week until May 10, 2020.¹ In adopting the remaining findings, we deem 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 portion of the review examiner's legal conclusion, which denied benefits for a period after the claimant's school year ended.

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.² 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 requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that he is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk).

In his original decision, the review examiner properly concluded that the claimant was entitled to PUA benefits from March 15 through May 16, 2020. CARES Act, § 2102(a)(3)(A)(ii)(I)(jj), lists as a qualifying reason for PUA benefits that “the individual's place of employment is closed as a direct result of the COVID-19 public health emergency.” Here, the review examiner found that the claimant's school shut down because of the COVID-19 emergency on March 16, 2020, and, as a result, the claimant had to stop working at the school's equipment distribution center. *See* Consolidated Findings ## 5 and 7.

Although the college continued to pay him \$89.25 per week through the end of the school year, May 10, 2020, the record shows that the claimant had been earning approximately \$150 to \$230 per week before the school closed. *See* Exhibit 6.³ Thus, he was partially unemployed for the reason listed under § 2102(a)(3)(A)(ii)(I)(jj), until the end of the school year and eligible for PUA benefits. Pursuant to guidance from the U.S. Department of Labor (DOL), individuals must report

¹ The information contained in these paystubs, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

²Pub. L. 116-136 (Mar. 27, 2020), § 2102.

³ This is also part of the unchallenged evidence in the record.

any earnings in each week that they file for PUA and the individual's weekly benefit amount may be reduced on account of such earnings according to state law.⁴

The original decision denied PUA benefits beginning May 17, 2020, and thereafter. However, with his appeal to the District Court, the claimant produced new evidence which was considered at the remand hearing, including a letter from his former college employer. *See* Remand Exhibit 5. As a result, the consolidated findings now provide that the claimant would have continued working at the equipment distribution center after the end of the spring 2020 semester. *See* Consolidated Finding # 9. As noted in the credibility assessment, the record shows that, had it not been for the COVID-19 pandemic, he would have worked there from May 11 through August 30, 2020. *See also* Consolidated Finding # 9.

A different provision of the CARES Act allows PUA benefits to be paid to an individual who was scheduled to start employment but did not have a job as a direct result of the COVID-19 public health emergency. *See* CARES Act, § 2102(a)(3)(A)(ii)(I)(gg). Because the record now shows that the college planned to employ the claimant beyond the end of the semester, from May 11 through August 30, 2020, but did not because of the COVID-19 pandemic, the claimant has demonstrated that he was not employed during this period for the listed CARES Act reason under § 2102(a)(3)(A)(ii)(I)(gg).

We, therefore, conclude as a matter of law that the claimant has met the requirements to demonstrate that he was unemployed or partially unemployed for reasons listed under CARES Act, § 2102(a)(3)(A)(ii)(I)(gg) and (jj), from March 15 through August 30, 2020.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive PUA benefits for the weeks beginning March 15, 2020, through August 29, 2020, if otherwise eligible. The claimant is not entitled to receive PUA benefits as of the week beginning August 30, 2020.

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**

⁴ *See* DOL Unemployment Insurance Program Letter 16-20, Change 6 (Sept. 3, 2021), Attachment I, p. I-6; *see also* G.L. c. 151A, § 29(b). However, because the claimant earned less than his weekly benefits amount of \$267, he is not subject to a reduced benefit. *See* G.L. c. 151A, § 1(r)(1).

(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