

**The claimant was a full-time student working part-time for a college in MA when the college shut down due to COVID and her hours were reduced. Her academic year job ended in mid-May 2020 and she did not have a genuine offer of employment for the summer of 2020. The claimant was therefore eligible for PUA benefits during the time between the effective date of her claim and the end of the 2019-2020 academic year, and ineligible thereafter.**

**Board of Review  
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Member  
Michael J. Albano  
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**Issue ID: N6-FJVF-FJL9**

### 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 15, 2020, which was denied in a determination issued on December 7, 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 9, 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 her work was impacted by the COVID-19 pandemic, and, thus, the claimant was not eligible for PUA benefits. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant failed to carry her burden to show that her Massachusetts work was impacted by the COVID-19 pandemic because her hours were not reduced following the closure of her college campus, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

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

1. The claimant filed a claim for Pandemic Unemployment Assistance effective March 15, 2020. The Department of Unemployment Assistance (DUA) determined the claimant's benefit rate would be \$267.00 per week.
2. The claimant is a college student at a Massachusetts university.

3. The claimant worked part-time with different university departments during the 2019–2020 academic year. The claimant does not work on campus during the summer.
4. The claimant continued to work with the university through the end of the 2019-2020 academic year.
5. On December 7, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination informing the claimant they [sic] were not eligible to receive PUA 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 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 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 ineligible for 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. Pursuant to the provisions of the CARES Act, the U.S. Department of Labor (DOL) has issued guidance about qualifying for PUA benefits. Its Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (Apr. 27, 2020) specifies that full-time students may be eligible for PUA benefits so long as they are unemployed or partially unemployed for a qualifying reason listed under § 2102(a)(3)(A)(ii)(I)(aa)-(kk) of the CARES Act.<sup>2</sup> 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 individual has experienced a reduction in hours as a direct result of the COVID-19 public health emergency. *See* UIP 16-20, Change 6, Attachment I, (kk)(4), p. I-7 (Sept. 3, 2021).

The claimant was a full-time student studying at a college in Massachusetts. Finding of Fact # 2. She worked part time for several departments through the end of the 2019-2020 academic year. Findings of Fact ## 3–4. A letter from the college president, admitted into evidence as Exhibit 9, shows that the school elected to close its campus in March 2020 and transition to remote learning.<sup>3</sup> Despite the school’s closure, the review examiner denied the claimant PUA benefits on the grounds

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

<sup>2</sup> *See* UIP 16-20, Attachment I, D(28), p. I-7.

<sup>3</sup> Exhibit 9, while not explicitly incorporated into the review examiner’s findings, is a 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).

that work continued to be available to her, and her pay records did not indicate her hours were cut when the campus closed due to the COVID-19 pandemic. We disagree.

A record of the claimant's payroll, which was admitted into evidence as Exhibit 11, documented her earnings in bi-weekly increments from the pay period ending February 7, 2020, through the pay period ending May 15, 2020.<sup>4</sup> Upon closer examination, these records show that the claimant experienced an average decrease in hours between 27% and 60% after the college announced it would be closing the campus and transitioning to remote learning. As such, we believe the claimant met her burden to show that she was partially unemployed for a qualifying COVID-19 reason listed in § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, when her work was substantially reduced.

However, the claimant's job with her college ended at the close of the 2019-2020 academic year. *See Finding of Fact # 3.* Nothing in the record indicates that the claimant had obtained employment in Massachusetts from any employer for the summer of 2020. Absent any evidence suggesting otherwise, we cannot conclude that she was unemployed due to the COVID-19 pandemic after her part-time job ended in mid-May 2020.

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 criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act from the week beginning March 15, 2020, through May 16, 2020.

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<sup>4</sup> Exhibit 11 is also a part of the unchallenged evidence of record.

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 16, 2020. The claimant is ineligible for PUA benefits from the week beginning May 17, 2020, and for subsequent weeks thereafter.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 17, 2021**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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.

LSW/rh