

**The claimant could not perform her work as an usher at her college in MA because her employer cancelled its shows due to the restrictions in place as a result of COVID-19. During this period, the claimant is eligible for PUA benefits.**

**Board of Review  
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**Issue ID: N6-FJVF-FKRL**

### 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 November 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 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 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 obtain additional evidence pertaining to the claimant's employment status in 2020. 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 did not present sufficient evidence to show that she was out of work as an usher at her college due to an approved COVID-19 related reason, 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 for [sic] Pandemic Unemployment (PUA) claim, effective March 8, 2020.

2. On November 16, 2020, the Department of Unemployment Assistance (DUA) issued a Notice of Non-Monetary Issue Determination—COVID-19 Eligibility to the claimant, stating that she was not eligible for PUA benefits.
3. The claimant filed her PUA claim with a New York address.
4. The claimant attends a college in Massachusetts.
5. The claimant worked as an usher at the college's theater in 2018 and 2019.
6. The claimant left Massachusetts on January 5, 2020 to do a school-sponsored study abroad program in [City A]. The claimant was in [City A] until mid-March, when her study abroad program was cancelled.
7. When the study abroad program was cancelled, the claimant went home to New York. She stayed there until August 7, 2020, when she returned to Massachusetts to resume school.
8. The theater that the claimant had worked at in 2018 and 2019 closed on March 16, 2020, due to the COVID-19 public health emergency. In 2020, the claimant did not perform any work for the theater before the theater's closure.
9. On March 19, 2020, the college sent the claimant an email informing her that shows had been cancelled due to the pandemic and that remote work was available. In response to the college's email, on March 20, 2020, the claimant sent an email to her supervisor requesting remote work.
10. The claimant's employer offered her three remote shifts. The claimant accepted two of those shifts, but only ended up working one.
11. The claimant did not work the March 31, 2020 remote shift, because her grandfather died of COVID-19.
12. Although she accepted [an] April 25, 2020 shift, the claimant did not work that week. She was unable to work that week, because she was helping her grandmother receive her grandfather's social security benefits.
13. On April 1, 2020, the claimant received an email from her supervisor informing her that a play which was originally scheduled for July 2020, was postponed due to the pandemic.
14. The claimant was unavailable to work from April to May 2020, because she was helping her grandmother.
15. In 2020, there were no shifts that the claimant agreed to work and planned to work, but did not end up working, because they were assigned to someone else. No one else worked shifts that the claimant had signed up to work.

16. The claimant planned on working at the theater during the summer of 2020. However, at no point was she scheduled to work at the theater. The employer knew that she was studying abroad but kept the claimant on the payroll for when she returned from studying abroad.
17. During the second quarter of 2020, the claimant received \$80 dollars per week from her college. The college paid students a stipend if they had lost their on-campus jobs due to the pandemic.
18. The claimant did not work at the theater during the summer of 2020.
19. In the fall of 2020, the claimant worked at the theater. She worked all the shifts that she could fit into her schedule.
20. The last time the claimant worked for the theater was mid-to-late to [sic] November. The claimant stopped working because the shifts conflicted with her class schedule.

#### Credibility Assessment:

The claimant provided credible testimony and documentation showing that she requested remote work from her manager. In support of her testimony, the claimant provided an email from her manager, which listed the remote work opportunities available during March and April 2020. The email shows that the claimant was offered three remote shifts and that she accepted two shifts. The claimant credibly testified that she accepted two shifts but was only able to work one shift because her grandfather died of COVID-19.

The claimant credibly testified that she was not in Massachusetts from January 5, 2020, to August 7, 2020, and that she intended to work at the theater during the summer of 2020, even though she was not scheduled to work at the theater. The claimant credibly testified that she was in [City A] from January 5, 2020, until March, 2020, and that the theater expected her to work for them after she came back from [City A].

#### 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. We set aside the parts of Consolidated Finding of Fact # 16 and the Credibility Assessment, which state that the claimant was not scheduled to work at her college's theater in the summer of 2020. Even if the claimant's specific summer schedule had not yet been created or finalized, in light of the portions of Consolidated Finding # 16 and the Credibility Assessment, which state that the claimant was kept on the theater's payroll and was expected to work for the

theater after she returned from [City A], it is clear that the claimant had accepted an offer to work at the theater in the summer of 2020.<sup>1</sup> We also set aside the portion of Finding of Fact # 17, which states that the claimant received an \$80.00 weekly stipend from the employer during the second quarter of 2020. The claimant testified during the remand hearing that the stipend was issued only through the end of the 2020 spring semester, which, based on the totality of the evidence in the record, we can reasonably infer terminated at the beginning of May, 2020. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. We further believe that the remainder of 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 she 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.<sup>2</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 criteria for eligibility is § 2102(a)(3)(A)(ii)(I)(gg), which states that an individual will be eligible for PUA benefits if she 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 here is a student at a Massachusetts college, who has worked as an usher for the school's theater since 2018. Prior to the effective date of her claim, March 8, 2020, the claimant was not working, as she was studying abroad in [City A]. The claimant was anticipating returning to Massachusetts from her study abroad program at the end of April and was going to work at the theater during her summer break from school. However, due to the closures and restrictions arising from the COVID-19 public health emergency, the claimant's study abroad program was canceled in mid-March, 2020, and she returned home to New York. At that time, the claimant sought work with the employer and obtained a few shifts working remotely, although she only completed one of the shifts. Due to the continuing COVID-19 restrictions, the employer canceled its events and closed, so the claimant was unable to return to Massachusetts to work as an usher during the summer school break in 2020. The claimant ultimately returned to Massachusetts on August 7, 2020, for the fall school semester.

Based on the evidence in the record before us, we believe the claimant has shown that she was unemployed for a part of 2020 as a direct result of the college cancelling its events due to the COVID-19 emergency. However, the claimant's eligibility for PUA benefits does not begin on the effective date of her claim, March 8, 2020. Because the claimant was originally scheduled to return from her study abroad program at the end of April, 2020, and to begin work after that, her state of unemployment in March and April of 2020 was not the direct result of the COVID-19 emergency.

Furthermore, while it is true that the claimant could not commence work as planned in May, 2020, because the college cancelled its events due to the COVID-19 emergency, she was otherwise not

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<sup>1</sup> We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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).

<sup>2</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

available to perform any type of work through the end of May, 2020.<sup>3</sup> Consolidated Finding # 14 provides that she was unavailable to work because she was helping her grandmother. This is not one of the COVID-19 listed reasons under the CARES Act. For this reason, her eligibility for PUA benefits does not begin until June 1, 2020.

We, therefore, conclude as a matter of law that the claimant is eligible for PUA benefits during the period that she was out of work in Massachusetts for the listed COVID-19 reason under § 2102(a)(3)(A)(ii)(I)(gg) of the CARES Act.

The review examiner's decision is affirmed in part and reversed in part. We affirm the part of the decision denying benefits to the claimant between the weeks ending March 14, 2020, and May 30, 2020. However, we reverse the part of the decision denying benefits to the claimant beginning the week ending June 6, 2020, as the claimant is entitled to receive PUA benefits as of that week, and for subsequent weeks if otherwise eligible.

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

SVL/rh

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<sup>3</sup> See UIPL 16-20, Change 1, Attachment I, G, question 48, p. I-12.