

**The claimant is a NH resident who operated a cleaning business in MA. She demonstrated that, because customers refused to allow her into their homes during the pandemic, she experienced a significant diminution of services due to the COVID-19 public health emergency. Board held she was out of work for a listed COVID-19 reason under CARES Act, § 2102(a)(3)(A)(ii)(I)(kk), and was eligible for PUA benefits.**

**Board of Review  
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Chairman  
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**Issue ID: N6-FJVF-NM93**

### 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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective March 29, 2020, which was denied in a determination issued on November 24, 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 April 26, 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 her 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 failed to establish that she experienced a loss of employment income as a result of 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) effective March 29, 2020.
2. The claimant filed her claim for PUA benefits using a New Hampshire home address.
3. The claimant did file both a federal and Massachusetts state tax return in 2019 and 2020. Each of these documents includes a Schedule C, which provides a financial description of the claimant's cleaning business.
4. The Schedule C's for 2019 show gross earnings of \$14,055, expenses of \$8,257 and net earnings of \$5,798.
5. The Schedule C's for 2020 show gross earnings of \$3,495, expenses of \$2,130 and net earnings of \$1,365.
6. The claimant was paid by check from her clients for her cleaning services performed in Massachusetts.
7. The check to the claimant from [Name A], dated March 2, 2020, was given to the claimant for cleaning services that she provided to [Name A].
8. The check to the claimant from [Name A], dated March 20, 2020, was given to the claimant for cleaning services that she provided to [Name A].
1. 9. The check to the claimant from [Name B], dated February 28, 2020, was given to the claimant for cleaning services that she provided to [Name B].
9. The check to the claimant from [Name C] or [Name D], dated January 26, 2020, was given to the claimant for cleaning services that she provided to [Name C] and [Name D].
10. The check to the claimant from [Name E], dated February 29, 2020, was given to the claimant for cleaning services that she provided to [Name E].
11. The check to the claimant from [Name F], dated March 18, 2020, was given to the claimant for cleaning services that she provided to [Name F].
12. Prior to the COVID-19 pandemic, the claimant had six clients for whom she provided cleaning services in Massachusetts, either on a weekly or twice a month basis, depending on the client.
13. In March 2020, the Massachusetts government issued a State of Emergency as a result of the COVID-19 emergency, which prohibited the claimant from going into her clients' homes. Furthermore, her clients were concerned about the COVID-19 virus and no longer wanted the claimant coming to their homes to provide cleaning services.

14. When the State of Emergency was lifted in Massachusetts, the only client who continued to want the claimant to provide cleaning services was [Name G]. The claimant worked for [Name G] on a biweekly basis during the summer of 2020 and on a weekly basis the rest of the year. This was the same pattern of work the claimant performed for [Name G] before the pandemic.
15. None of the claimant's other clients chose to have her resume cleaning their homes as she did before the COVID-19 pandemic. They communicated this to her through telephone conversations.
16. Prior to the COVID-19 emergency, the claimant worked about 15 hours per week and earned between \$400 and \$500 per week.
17. Since the COVID-19 emergency, the claimant has only worked 4 hours per week and has earned between \$100 and \$125 per week.
18. Because of the COVID-19 emergency and the resulting loss of business, the claimant decided to semi-retire as of the fall of 2020. She did not look to replace the clients who no longer wanted to use her cleaning services.
19. The claimant's one remaining client, [Name G], sold her house and will no longer need the claimant's services after the end of September 2021. The claimant plans to retire at that time.
20. In her weekly certifications, the claimant chose, "I am self-employed, an independent contractor or a gig worker and Covid-19 has severely limited my ability to perform my normal work."

#### Credibility Assessment:

The claimant testified credibly during the hearing and was able to discuss the documents she had previously submitted either after her original hearing or in response to the Board's requests. The claimant's 2019 and 2020 federal and Massachusetts tax returns show a decrease in her earnings after the COVID-19 emergency began in the spring of 2020.

The claimant's new testimony about the submitted documents bolstered her prior testimony from the original hearing. The claimant was able to put forward a clear discussion of how the COVID-19 emergency had a negative impact on her cleaning business and earnings, using not only her credible testimony, but the documentary evidence in support thereof. She used checks from her clients (Remand Exhibits 11-13) to show how frequently they used her services prior to the COVID-19 emergency, and she was able to confirm that all the checks she had previously submitted (Exhibits 6-11) were given to her as payment for cleaning services she provided to them.

The fact that the claimant, a New Hampshire resident, filed Massachusetts Non-Resident tax returns in 2019 and 2020 further confirms that she worked and had earnings in Massachusetts in 2019 and 2020. Finally, the addresses of the claimant's clients on their checks also confirms that they all lived in Massachusetts, further showing that the claimant worked and had earnings in Massachusetts in 2019 and 2020.

### 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. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant does not meet the COVID-19 eligibility requirements.

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). Pursuant to § 2102(a)(3)(A)(ii)(I)(kk), the U.S. Secretary of Labor has stated that one of those listed reasons is that a self-employed individual who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency. *See Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), (kk), p. I-3.* 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.

The consolidated findings provide that the claimant is a New Hampshire resident who operates a cleaning business in Massachusetts. *See Consolidated Findings of Fact ## 2–3.* In March, 2020, the Massachusetts government issued a State of Emergency due to the COVID-19 emergency. As a result, the claimant's clients were concerned about the COVID-19 virus and no longer wanted the claimant coming to their homes to provide cleaning services. *See Consolidated Finding of Fact # 14.* Prior to the COVID-19 emergency, the claimant worked about fifteen (15) hours per week and earned between \$400 and \$500 per week. Since the COVID-19 emergency, the claimant has only worked 4 hours per week and has earned between \$100 and \$125 per week. *See Consolidated Findings of Fact ## 17–18.* These findings demonstrate that the claimant experienced a significant diminution of her customary or usual services because of the COVID-19 public health emergency.

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

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

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 29, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 6, 2021**



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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.

TJG/rh