

The claimant was a full-time student working part-time for a college in MA, when the college shut down due to COVID. Because he graduated in May, work was no longer available to him for reasons unrelated to the COVID-19 pandemic. The claimant was therefore eligible for PUA benefits during the time between the effective date of his claim and the date he graduated, and ineligible thereafter.

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

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 6, 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 he was working in Massachusetts when his work was impacted by the COVID-19 by the COVID-19 pandemic, 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 information pertaining to the claimants work 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 failed to carry his burden to show that he was working in Massachusetts when his work was impacted by the COVID-19 pandemic, 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 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 has a home address of New York.
3. The claimant attended a Massachusetts college. The claimant worked at the college in 2019.
4. The claimant has a 2019 W-2 showing \$1,400.29 in wages.
5. The claimant has a paycheck from his Massachusetts college from March 8, 2020-March 14, 2020 for \$77.39 gross wages and YTD gross wages of \$610.61.
6. The claimant worked at the athletic department part-time as a student and he left school due to the dormitories closing and classes ending on March 13, 2020.
7. The claimant has a February 16, 2021 letter from the school stating he was enrolled full-time and lived on-campus in the spring semester of 2020. The school closed mid-March.
8. The claimant graduated in May 2020 and his job would have no longer been available following graduation.
9. On September 16, 2020, the DUA sent 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.
10. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant's testimony was credible regarding all matters discussed at the hearing. In addition, the claimant has submitted payroll records that support he was working part-time and living at the college in March 2020. Therefore, the claimant has shown that he was not working due to COVID-19 from mid-March through to his graduation.

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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion

that the claimant did not meet his burden to show that his Massachusetts work was impacted by 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.¹ In order to qualify for PUA benefits, the claimant must show that he 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.² 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 they were “unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities.” UIPL 16-20, Attachment I, C(1)(k), p. I-6 (Apr. 5, 2020).

The claimant was a full-time student living and studying at a college in Massachusetts. Consolidated Findings ## 3 and 7. He worked part-time in the athletic department until March 13, 2020, when the college closed its campus and sent students home as a result of the COVID-19 pandemic. Consolidated Findings ## 6 and 7. The college closure and order that the claimant return home caused the claimant to stop performing his job in Massachusetts. As such, we conclude that the claimant met his burden to show that he was working in Massachusetts when he became unemployed for a qualifying COVID-19 reason listed in § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

However, the claimant’s job with his college would have ended when he graduated in May 2020. Consolidated Finding # 8. As work would not have been available to the claimant following his graduation regardless of the COVID-19 pandemic, he was no longer unemployed for a qualifying COVID-19 reason after May 2020.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he was out of work in Massachusetts for one of the eligibility criteria 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 8, 2020 through May 30, 2020.

¹ Pub. L. 116-136 (Mar. 27, 2020), § 2102.

² See UIPL 16-20, Attachment I, D(28), p. I-7.

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 30, 2020. The claimant is ineligible for PUA benefits from the week beginning May 31, 2020, and for subsequent weeks thereafter.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 13, 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

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