

The claimant, a student, was unemployed due to one of the reasons listed in the CARES Act, as his place of employment closed as a direct result of the COVID-19 emergency. However, because he did not establish that he was planning to continue working after graduation, he is not eligible for PUA benefits after that date.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: N6-FJVF-PR65

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 as of May 15, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020, which was denied in a determination issued on December 8, 2020. 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 March 23, 2021. The review examiner awarded PUA benefits to the claimant from the start of his claim through the week ending May 15, 2020, and denied benefits indefinitely thereafter. We accepted the claimant's application for review.

Benefits were denied beginning on May 16, 2020, after the review examiner determined that the claimant had failed to establish that, as of that date, he 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. 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 did not present sufficient evidence to show that he was out of work due to an approved COVID-19 related reason after May 15, 2020, 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 PUA benefits, with an effective date of March 15, 2020.

2. The claimant filed the PUA claim using a Florida address.
3. The claimant was attending college as a senior in Massachusetts in 2020. The claimant was living in Massachusetts up until March 2020 when they moved to a Florida family home.
4. The claimant was working as a technology support analyst at their school until March 13, 2020, when the claimant stopped working because the campus was closed to students due to the COVID-19 public health emergency.
5. The claimant graduated on May 15, 2020.
6. During the claimant's sophomore year in 2018, he continued his work for the college through the summer semester without reapplying for his position.
7. The college's policy allows for seniors to continue working through the summer semester, which concluded on July 31, 2020, without needing to reapply for the position.
8. The claimant's job would have been available to him until July 31, 2020, if not for the COVID-19 public health emergency.
9. The claimant had not made plans to continue working at the time the college's campus closed because a decision was not yet required.

Credibility Assessment:

The claimant provided testimony in the initial hearing and remand hearing which is consistent with the documentary evidence. The testimony is deemed to be credible as to whether his job was available to him during the summer semester.

Ruling of the Board

In accordance with our statutory obligation, we review 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. After such review, the Board adopts the review examiner's findings of fact and 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 agree with the review examiner's legal conclusion that the claimant did not show he was unemployed as a result of the COVID-19 pandemic after May 15, 2020.

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

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

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 criteria for eligibility is set forth under § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act, which provides that an individual will be eligible for PUA benefits if his “place of employment is closed as a direct result of the COVID-19 public health emergency.”

The claimant here was a senior at a Massachusetts college with an expected graduation date of May 15, 2020. *See Consolidated Findings ## 3 and 5.* He worked on campus for the college’s information technology department in 2020, however he lost his position on March 13, 2020, because the school campus closed due to the COVID-19 public health emergency. *See Consolidated Finding # 4.* The school had a policy that allows graduating seniors with on-campus jobs to remain employed without having to reapply through the end of the summer semester. *See Consolidated Finding # 7.* At the time he lost his job due to the campus closure, he did not have plans to continue working in that job after graduation. *See Consolidated Finding # 9.*

The claimant testified that in previous years, he would notify his manager of his intention to continuing working over the summer, but that he had not done so in 2020 because he had not yet decided whether he would continue working beyond graduation.² The review examiner concluded that the claimant lost his employment in March as a result of COVID-19. Because the claimant was scheduled to graduate on May 15, 2020, the review examiner further concluded that the claimant’s position was scheduled to end on that date, and, therefore, he was not unemployed due to COVID-19 after the week ending May 16, 2020.

We agree with the review examiner’s decision. The record shows that the claimant did lose work because his place of employment closed due to the COVID-19 public health emergency on March 13, 2020. However, he has failed to present substantial evidence that he lost employment thereafter. While the claimant did present credible evidence that the job would have been available to him after graduation, the claimant admitted that he did not have specific plans to continue working after his graduation.

We therefore conclude as a matter of law that the claimant has met his burden to show that he was out of work for a listed COVID-19 reason under § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act. We further conclude that he has not shown that he was out of work for this reason beyond his graduation date.

The review examiner’s decision is affirmed. The claimant is entitled to PUA benefits from March 15, 2020, until the week ending May 16, 2020, if otherwise eligible. The claimant is not entitled to benefits beginning May 17, 2020, and indefinitely thereafter.

² While not explicitly incorporated into the review examiner’s findings, this portion of the claimant’s testimony 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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 5, 2022



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.

RTG/rh