

**Review examiner incorrectly disqualified the claimant because he would have been monetarily eligible for regular unemployment benefits if he had filed immediately after being furloughed. He was not required to do so. Since DUA had determined the claimant monetarily ineligible for regular unemployment benefits based upon the date he filed his claim, he could file a claim for PUA. Since he was out of work because he was furloughed due to COVID-19, he was eligible for PUA benefits.**

**Board of Review  
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Member  
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**Issue ID: N6-FJVH-82N4**

### 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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020, which was denied in a determination issued on February 23, 2021. 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 August 16, 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 ineligible for regular unemployment insurance (UI) benefits and, therefore, under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, 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 claimant was not eligible for PUA benefits because he qualified for a regular unemployment claim, 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. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.

2. The claimant certified in his PUA application that his place of employment closed because of COVID-19.
3. The claimant attended a college for the arts in Massachusetts and was living and working in [location] when the COVID-19 emergency occurred. The claimant worked for a catering company at special events during the school year. The claimant has his Form W-2 wage and tax statement from his employer's parent company for Massachusetts based employment in 2019 and 2020 reporting gross wages of \$610.46 and \$1,028.42, respectively.
4. The claimant has a letter dated March 20, 2020, from the catering company indicating that he was being furloughed due to staffing reductions made necessary by the COVID-19 emergency and that he will be placed on temporary layoff until the company has been able to confirm a return date.
5. The claimant has a 2019 Form W-2 wage and tax statement from his work at a theatre company in Texas reporting the claimant's gross wages of \$5,818.26. The claimant also has a 2019 Form W-2 wage and tax statement from a theatre company in Massachusetts reporting his gross wages of \$3,453.38.
6. On February 23, 2021, 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.
7. 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. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant was eligible for regular unemployment benefits and therefore disqualified for PUA benefits.

The claimant in this case seeks PUA benefits, an 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 benefits, a claimant must show that he is a covered individual within the meaning of the CARES Act. The CARES Act only grants PUA benefits to a claimant who is not eligible for regular unemployment benefits. § 2102(a)(3)(A)(i).

In his decision, the review examiner refers to the claimant's testimony that he had filed a regular unemployment claim, with an effective date of July, 2020. The recorded hearing transcript reveals that the claimant testified that the DUA told him he did not earn enough money to qualify for

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

regular unemployment benefits. The review examiner looked up his claim information in the DUA's electronic record-keeping system for regular unemployment benefits, UI Online. We note that UI Online records confirm that the claimant attempted to file a regular unemployment claim.<sup>2</sup> Nonetheless, the review examiner concludes that, *if* the claimant had filed his regular unemployment claim immediately after he was furloughed on March 20, 2020, rather than waiting to file a claim in July, he would have been monetarily eligible for regular unemployment benefits based upon his earlier earnings in 2019. On this basis, he disqualified the claimant from receiving PUA benefits. This was an error.

In order to have been monetarily eligible for regular unemployment benefits in 2020, a claimant must have been paid wages in the amount of \$5,100.00 during his base period and have been paid at least thirty times his weekly benefit rate. *See* G.L. c. 151A § 24(a).<sup>3</sup> The base period is generally the last four completed calendar quarters immediately preceding the claim filing date. *See* G.L. c. 151A, § 1(a). Under this formula, there is certainly an incentive to promptly file an unemployment claim, particularly if the claimant had earned wages in the earlier quarters. However, the Legislature did not impose any statutory requirement to file immediately upon becoming unemployed, and there is nothing in the CARES Act which imposes a similar obligation. A claimant may not be denied PUA benefits for failing to do so.

The DUA's UI Online system shows that the claimant filed a regular unemployment claim on July 9, 2020. It further shows reported wages of only \$3,987.88 earned during his base period (July 1, 2019 through June 30, 2020). This confirms that he was not monetarily eligible for regular unemployment benefits and satisfies the CARES Act requirement under § 2102(a)(3)(A)(i) to file a PUA claim.

The only other questions is whether he had a valid COVID-19 reason to qualify for PUA benefits.

Pursuant to CARES Act § 2102(a)(3)(A)(ii)(I)(kk), the U.S. Secretary of Labor has stated that one such reason is if an individual is an employee who was laid off as a direct result of the COVID-19 public health emergency. *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), Attachment I (kk)(4), p. I-7.

In this case, the claimant had worked as an employee for a catering company that announced a furlough effective March 20, 2020, due to the COVID emergency. *See* Finding of Fact # 4. Under these circumstances, the claimant has shown that he was laid off as a direct result of the COVID-19 public health emergency.

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<sup>2</sup> This portion of the claimant's testimony is supported by the DUA's electronic record-keeping system for regular unemployment insurance, which shows that the claimant applied for regular unemployment benefits on July 9, 2020. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner and information in the DUA's electronic records. *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>3</sup> G.L. c. 151A, § 24(a), states that a claimant must have earned \$2,000.00 in the base period. However, this amount has been changed, as required under the statute, based on changes to the minimum wage. For a claim effective after January 5, 2020, the minimum amount of wages needed for a valid unemployment claim was \$5,100.00. *See* DUA UI Policy and Performance Memo (UIPP) 2019.07 (Dec. 19, 2019).

We, therefore, conclude as a matter of law that law that the claimant has met his burden to show that he was a covered individual eligible for PUA under the CARES Act §§ 2102(a)(3)(A)(i) and 2102(a)(3)(A)(ii)(I)(kk).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 15, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 5, 2022**



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.

MS/rh