

**The claimant failed to establish that she performed services for her internet retail business in Massachusetts or that it was negatively affected by the COVID-19 public health emergency. She is therefore not entitled to PUA benefits.**

**Board of Review  
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Member  
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Member**

**Issue ID: N6-FJVH-D462**

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 affirm.

The claimant filed a claim for PUA benefits with the DUA, effective March 22, 2020. On December 5, 2020, the Department of Unemployment Assistance (DUA) sent the claimant a Notice of Non-Monetary Issue Determination-COVID-19 eligibility, informing her that she was not eligible to receive PUA benefits. 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 in a decision rendered on May 28, 2021. We accepted the claimant's application for review.

The review examiner concluded that the claimant was ineligible for PUA benefits on the basis that the claimant failed to present sufficient evidence to verify receiving income from the performance of services in Massachusetts in 2020. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case for the review examiner to consider the additional documents submitted with the claimant's Board appeal. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact and credibility assessment. 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 was ineligible for PUA benefits because she failed to prove that she had been working on her internet retail business within Massachusetts during 2020, 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) benefits, with an effective date of March 22, 2020. The Department of Unemployment Assistance (DUA) determined the claimant's weekly PUA benefit amount to be \$267.
2. The claimant was not working in Massachusetts (MA) or going to be working in MA in 2019 and/or 2020. The claimant did not have MA income in 2019 or 2020.
3. The claimant did not file MA income taxes in 2019 or 2020.
4. The claimant lives in North Carolina (NC) and registered for Pandemic Unemployment Assistance (PUA) using her NC address.
5. The claimant was born with Cerebral Palsy and has both a physical and mental handicap.
6. The claimant's brother and father are the sole owners of a Massachusetts (MA) family manufacturing, warehousing, and online sales business. The father owns sixty (60) percent of the company, and the brother owns forty (40) percent of the company.
7. The company is listed under the claimant's name, in name only.
8. The claimant does not own any portion of the business.
9. The company owns a warehouse in [City], MA where they manufacture and sell goods from.
10. The claimant only receives wages from the company if she travels to MA from NC and performs work, stocking shelves and taking pictures of merchandise, in the [City], MA warehouse.
11. The claimant did not travel from NC to the MA warehouse and earn wages in 2019 or 2020.
12. The claimant received a 1099K from the third-party internet sales company for the proceeds from selling the company merchandise online.
13. Payments resulting from sales from the family company are deposited to the claimant's bank account and then are transferred to the father's and brother's bank accounts.
14. On the claimant's PUA registration she certified that her 2019 income was \$19,083.00.

15. For the tax year of 2019, the claimant received a 1099-K form from a third-party online sales entity indicating gross earnings of \$104,782.25 for the tax year. These funds were transferred to the father and brother's bank account.
16. The claimant's 2019 NC Schedule C (1040) tax document shows a profit of \$3,247.00. (Other Miscellaneous).
17. In 2020, the company sold items through the third part internet sales company in each month in 2020.
18. For the tax year of 2020, the claimant received a 1099-K form from a third-party online sales entity indicating gross earnings of \$145,907.24. The 1099-K is issued to the claimant by name and lists her NC address. These finds [sic] were transferred to the father and brother's bank accounts.
19. The claimant's 2020 NC Schedule C (1040) tax document shows a profit of \$1,066.00. (Other Miscellaneous) and is a joint return.
20. The claimant did not have income from the family company in 2019 or 2020.

Credibility Assessment:

The claimant's and her brother/advocate's testimony that the claimant worked in MA is not credible and [is] unsubstantiated. The claimant and the advocate provided testimony that the advocate and the claimant's father own 100% of the company and that the company is in the claimant's name on paper only. The advocate provided testimony that the claimant travelled to MA from NC several times in 2019 and 2020 to perform work at the company's warehouse and earns her wages from the company when she works at the warehouse only, however, the claimant and the advocate were not able to provide any proof that the claimant did so. While the claimant and the advocate were able to provide gas receipts showing travel from NC to MA in 2017 and 2018, they were unable to provide such receipts from 2019 or 2020.

The claimant's testimony regarding her travel is further discredited due to lack of details she was able to provide regarding the frequency of her alleged trips. The claimant was unable to specify the dates that she traveled to MA to work, testifying that she travelled to MA and stayed for a couple of days or a couple of weeks. The claimant was further unable to show any documentation of accommodations in MA while she was allegedly here working because the advocate provided testimony that the claimant stayed with family members while in MA.

Additionally, the claimant and the advocate provided photographs of what appears to be a warehouse and a residential house. They provided testimony that the photographs are of the company's warehouse and prove that the claimant was there working, however the photographs do not include any identifying information that

the photographs are of the company's warehouse or that the claimant was at the warehouse working.

Moreover, the claimant's testimony is further discredited because she provided testimony that she does not file a MA tax return for the wages she allegedly earns in MA.

The claimant's testimony is further uncredible [sic] because of inconsistent testimony from both the claimant and the advocate regarding the claimant's income in 2019. The claimant reported \$19,083.00 of 2019 income on her PUA application, which is unaccounted for throughout the testimony. The claimant and the advocate testified that the amount listed on the claimant's 2019 1099K was admittedly for sales from the company, which was just passed through the claimant's bank account upon receipt and further transferred to the owners of the company, the advocate and the claimant's father. Additionally, the claimant's 2019 Schedule C shows a profit of \$3,247.00, while the claimant testified that is what she made in 2019 but then the advocate later testified that the claimant made between \$3,000 and \$6,000 in 2019.

The claimant's and the claimant's advocate's testimony regarding the claimant being affected by COVID-19 is also not credible. The claimant and the claimant's advocate alleged and provided a screenshot of an email stating that the company closed on March 23, 2020, as required by the Commonwealth of Massachusetts. However, the 1009-K from the third-party internet sales company lists that the company sold items each month in 2020, including March and April, when the business was allegedly closed.

### 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 agree with the review examiner's legal conclusion that the claimant is ineligible for PUA benefits.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under the Coronavirus Aid, Relief, and Economic Security (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 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 self-employed individuals will be eligible for PUA benefits if they experienced a significant diminution of their customary or usual services

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

because of the COVID-19 public health emergency.<sup>2</sup> Further, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.<sup>3</sup> Therefore, in order to be eligible for benefits, the claimant must show that she had work in Massachusetts that was negatively impacted by the COVID-19 pandemic.

In rendering his consolidated findings, the review examiner provided an extensive credibility assessment detailing his reasons for determining that the claimant's testimony and documents, which purported to show that she worked in Massachusetts during 2019 and 2020, lacked credibility. Based upon the record before us, we see no reason to disturb the review examiner's credibility assessment and the corresponding findings.

Specifically, the review examiner found that the claimant did not work or collect income in Massachusetts during 2019 or 2020. *See* Consolidated Finding # 2. She did not travel to Massachusetts to conduct business in 2019 or 2020. *See* Consolidated Finding # 11. The claimant did not file Massachusetts income taxes in 2019 or 2020. *See* Consolidated Finding # 3. Because these findings provide that the claimant had not been performing any services for her business within Massachusetts during 2020, she has not shown that she worked in Massachusetts and 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, because the claimant has not met her burden to show that she became unemployed for a listed reason related to COVID-19 under the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk), she is not eligible for PUA benefits.

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning March 22, 2020.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 19, 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)**

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<sup>2</sup> *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), Attachment I, p. I-1.

<sup>3</sup> *See* UIPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

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.

BGM/rh