

A Florida gas station owner demonstrated that he regularly travelled to perform services in his business in Massachusetts. He was unable to travel to Massachusetts for a period due to the COVID-19 public health emergency and, due to the decrease in overall traffic during the pandemic, he experienced a significant diminution of services. He is eligible for PUA benefits.

**Board of Review
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Issue ID: N6-FJVH-N77N

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 February 8, 2020, which was denied in a determination issued on November 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 17, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had not shown by substantial and credible evidence that he was working in Massachusetts at the time he was affected by a listed COVID-19 reason under the CARES Act. 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 for additional evidence pertaining to whether the claimant was unable to perform work in Massachusetts 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 was not eligible for PUA benefits because he failed to establish that he was working at his business in Massachusetts at the time he was affected by a COVID-19 listed reason under the CARES Act, 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 effective March 15, 2020. The Department of Unemployment Assistance (DUA) determined the claimant's benefit rate would be \$267.00 per week.
2. The claimant filed the PUA claim using a Florida address.
3. 2019 Tax Returns and a town business certificate show the claimant owns a gas station/convenience store in [Town A], Massachusetts.
4. The claimant moved to Florida in December of 2016.
5. The claimant continued to play an active role in administrative matters for the store.
6. The claimant managed the store's payroll, handled bill payments, and worked with distributors.
7. The claimant performed this work remotely from Florida beginning in December of 2016.
8. The claimant would typically travel to Massachusetts multiple times throughout the year to attend conferences or trade shows in his capacity as owner of the store.
9. During 2019, the claimant spent approximately 12 to 15 weeks performing work in Massachusetts related to the store. Approximately 3 of those weeks were during April and May of 2019. The remainder of his time in Massachusetts occurred between August and October.
10. In 2019, the claimant attended trade shows for new products and conferences to meet with potential distributors in Massachusetts.
11. The claimant performed maintenance onsite and assisted with stocking at the store in 2019.
12. During 2020, the claimant performed all administrative work for the store remotely from Florida.
13. The claimant planned to travel to Massachusetts in 2020 around the same times of year he had in 2019 to perform any necessary onsite maintenance or stocking or attend tradeshow or conferences that were scheduled.
14. The claimant did not travel to Massachusetts as he normally would because of COVID-19.
15. Monthly revenue statements show the claimant's gas station/convenience store was operating prior to and throughout the COVID-19 public health emergency.

16. Month to month revenue comparisons for 2019 and 2020 show significant decreases in total revenue for both gasoline and convenience store sales during the months of the COVID-19 public health emergency.
17. Public fear and government restrictions decreased travel and demand for gasoline, and thus, a decrease in overall traffic in the claimant's gas station and convenience store during the pandemic.
18. The claimant traveled to Massachusetts in July of 2020 to visit family.
19. On November 16, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination Informing the claimant he was not eligible to receive PUA benefits beginning the week ending February 8, 2020. ISSUE ID: N6-FJVH-N77N.
20. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant presented as credible in the remand hearing. The claimant testified with specificity the amount of time he normally spends in Massachusetts and the different tasks he performs while in Massachusetts compared to what he does remotely from Florida. It should be noted however, the claimant stated he would provide additional documentary evidence in the form of receipts to show his travel up to Massachusetts and the work he performed while here. He did not provide this documentary evidence.

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 is not entitled to 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.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. 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

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

if they were a self-employed individual who experienced a significant diminution of his customary or usual services because of the COVID-19 public health emergency.² Further, a claimant must file for PUA benefits in the state where he was working at the time he or she became unemployed.³ Therefore, in order to be eligible for benefits, the claimant must show that he had work in Massachusetts that was negatively impacted by the COVID-19 pandemic.

In this case, the claimant demonstrated that he lived in Florida and was self-employed at his gas station located in [Town A], Massachusetts. The claimant provided 2019 tax returns and a business certificate from the Town of [Town A], Massachusetts, showing that he owns and operates a gas station in Massachusetts. *See Consolidated Findings ## 3, 5, and 8.* Travel restrictions imposed in response to the COVID-19 emergency caused fewer travelers to be on the road, and thus a decrease in demand for the claimant's services as reflected in comparative revenue statements which the claimant submitted. *See Consolidated Findings ## 15–17.* The revenue statements show substantial and sustained decreases in gasoline and convenience store sales for 2020 compared to 2019. We agree with the review examiner's original conclusion that the claimant showed that the COVID-19 pandemic impacted his overall revenue. *See Remand Exhibit 1.*⁴ This shows that the claimant experienced a significant diminution of services directly attributable to the COVID-19 emergency.

The consolidated findings further provide that, after the claimant moved to Florida in 2016, he continued to perform administrative tasks for his Massachusetts business remotely. *See Consolidated Findings ## 5–8.* In a typical year, the claimant would spend between three and four months in Massachusetts performing services for his business, including onsite maintenance, and attending industry conferences and trade shows. *See Consolidated Findings ## 8–11.* The claimant did this from 2016–2019. *Id.* In 2020, the claimant planned to travel to Massachusetts to work as he did in previous years, but he was unable to because of travel restrictions put in place in response to the COVID-19 pandemic. *See Consolidated Findings ## 13–14.* The consolidated findings show that for three to four months out of 2020, the claimant could not perform his work in Massachusetts due to the COVID-19 public health emergency.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he experienced a significant diminution of services in Massachusetts within the meaning of the listed COVID-19 reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for

² *See* U.S. Department of Labor (DOL) Unemployment Insurance Program Letter (UIPL) 16-20 Change 6 (Sept. 3, 2021), Attachment I, pp. 13-14.

³ *See* (UIPL) 16-20 Change 6, pp. 7-8.

⁴ Remand Exhibit 1 is the review examiner's original decision. While not explicitly incorporated into the review examiner's findings, it 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).

the week beginning March 15, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 29, 2021



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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