

**Where the claimant, a Vermont resident, has produced wage and tax documents that evidence her having Massachusetts 2020 work, and she was laid off due to the COVID-19 public health emergency, she is entitled to PUA benefits under her Massachusetts claim.**

**Board of Review  
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Member  
Michael J. Albano  
Member**

**Issue ID: N6-FJVJ-6FRR**

### 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 November 18, 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 23, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to show that she was working in Massachusetts during 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 to the review examiner for additional evidence to consider employment documents submitted with the claimant's appeal to the Board. 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 worked in Massachusetts at the time of the COVID-19 public health emergency, 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 15, 2020.

2. The claimant filed the PUA claim using a Vermont address.
3. In 2019 the claimant worked in Massachusetts as a freelance graphic designer for Massachusetts company.
4. The claimant submitted a 2019 Form 1099 MISC from the Massachusetts company showing earnings of \$52,687.
5. The claimant submitted a 2020 Form 1099 NEC from the Massachusetts company showing earnings of \$28,995.
6. The invoices and other documents submitted by the claimant had performance service income from Massachusetts while the claimant was in Vermont.
7. The claimant filed 2020 Non-Resident Massachusetts tax returns along with a Schedule C. The MA schedule C demonstrated the claimant had performed services in Massachusetts.
8. The claimant received a stay-at-home order dated March 16, 2020, from her employer.
9. On May 1, 2020, the claimant received a lay-off notice from the company.
10. On November 18, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination (COVID-19 Eligibility) informing her that she was not eligible to receive benefits.
11. The claimant appealed the determination.

Credibility Assessment:

During the hearing, the documents requested by the Board were entered as remand exhibits. The Board's remand order, remand exhibits, and questions were reviewed with the claimant. In the original hearing, the claimant did not supply sufficient documentation to support a conclusion that she had earnings from a Massachusetts Company. In the remand hearing she explained that she worked remotely after March 16, 2020, when she received a stay-at-home order the pandemic and was laid off on May 1, 2020. only submitted a few time and payment [sic]. Her 2020 Massachusetts Non-resident tax return supports this conclusion. The claimant's testimony in response to the Board's question were credible, precise, and consistent throughout the hearing. The remand exhibits and other documentation she submitted were authentic and submitted [sic] supported her testimony. Taken together, it is concluded that the claimant became unemployed for an acceptable COVID-19 reason.

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 with the exception of the dates reported in Consolidated Findings ## 8 and 9, as the record reflects that the work-from-home order was sent to the claimant on March 18, 2020, and she was notified of her layoff on April 29, 2020. As to the review examiner's credibility assessment, we believe it to be reasonable in relation to the evidence presented, with the exception of the dates, as stated. We further note that the review examiner's stated conclusion that the claimant became unemployed for an acceptable COVID-19 reason is a legal conclusion which, at this stage in the proceedings, is reserved to the Board of Review. *See Dir. of Division of Employment Security v. Fingerman*, 378 Mass. 461, 463-464 (1979). Based on these consolidated findings, we disagree with the review examiner's decision to deny 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 an individual will be eligible for PUA benefits if he or she was "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."<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 affected for a listed COVID-19 reason.

The claimant satisfied the requirement to show she was working in Massachusetts during 2020 with the production of 1099 MISC forms for 2019 and 2020, work emails and invoices from January to March of 2020, and her 2020 Non-Resident Massachusetts tax returns containing a Schedule C form. *See Consolidated Findings ## 4, 5, 6 and 7.* All documents showed consistent performance service income with one Massachusetts company. *Id.* On March 18, 2020, this company notified the claimant by email that due to COVID-19, they were implementing a work-from-home order, and then it laid her off on April 29, 2020. *See Consolidated Findings ## 8 and 9.* These findings show that the claimant had work in Massachusetts during 2020 that was negatively affected for a listed COVID reason.

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

<sup>2</sup> *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(k), p. I-6.

<sup>3</sup> *See* UIPL16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

We, therefore, conclude as a matter of law that the claimant is entitled to receive PUA benefits for the COVID-19 listed 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 the week beginning March 15, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 6, 2022**



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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.

BGM/rh