

The employer, a private school, decided to lay off staff because of declining re-enrollment caused by the economic impact of the COVID-19 pandemic. Subsequently, the claimant's contract was not renewed. Where her contract was not renewed due to declining revenue resulting from the COVID-19 pandemic, the Board held the claimant was unemployed for an approved reason under the CARES Act, and she qualifies for PUA benefits.

**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-FJVJ-8H26

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 June 28, 2020, which was denied in a determination issued on October 20, 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 December 19, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to establish that she 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. 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 to obtain additional information about the circumstances surrounding the claimant's separation from employment. The claimant attended the remand hearing. Thereafter, the review examiner issued her 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 she separated from employment for reasons unrelated to the COVID-19 pandemic, 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 are set forth below in their entirety:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) which was determined to be effective June 28, 2020.

2. The claimant was employed as the Director of Enrollment for a private Catholic school system in Massachusetts beginning in January 2018. The claimant managed enrollment and admissions for students in Pre-K through Grade 12. The school system is funded solely by tuition.
3. The claimant started her position at a salary of \$55,000 annually and was earning \$62,000 in 2020.
4. The claimant's job was performed under a yearly contract that ran from July 1 to June 30 each year. The claimant worked during the summer months of 2019 as part of that yearly contract.
5. As part of her job duties, the claimant tracked families and students' re-enrollment. The claimant contacted families who did not re-enroll to determine why they had not re-enrolled.
6. During the spring of 2020, in her contacts with families not re-enrolling at the school system, the claimant was told by many families that they could not afford to return to the school because of financial distress due to the COVID-19 public health emergency.
7. The claimant learned through informal conversations with the school system administration during the spring of 2020 that the pandemic was causing a decline in enrollment and retention of current students, therefore putting the school system in financial distress, and some staff would be laid off to cut costs.
8. On May 22, 2020, the claimant received a letter from the school system informing her that her contract would not be renewed and would expire on its natural expiration date of June 30, 2020.
9. The claimant filed for PUA benefits when she was laid off from her job in June 2020.
10. On August 24, 2020, the claimant was hired as Director of Admissions for a private grade school in Rhode Island and is currently employed there with an annual salary of \$62,000.
11. On October 20, 2020, the Department of Unemployment Assistance (DUA) sent the claimant a Notice of Non-Monetary Issue Determination informing her she was not eligible for PUA benefits beginning the week of February 8, 2020, because she did not meet the eligibility requirements under Section 2102 of the CARES Act of 2020, Public Law 116-136.
12. The claimant timely appealed the DUA's October 20, 2020, 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 consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner’s 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. As discussed more fully below, we disagree with the review examiner’s legal conclusion that the claimant was not eligible for PUA benefits because she did not separate from employment as a result of the COVID-19 pandemic.

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 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 requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that she is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa) – (kk).

In her original decision, the review examiner rejected the claimant’s testimony that she was laid off as a result of the impact of the COVID-19 pandemic as not credible. Such assessments are within the scope of the fact finder’s role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). “The test is whether the finding is supported by “substantial evidence.”” *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted). “Substantial evidence is ‘such evidence as a reasonable mind might accept as adequate to support a conclusion,’ taking ‘into account whatever in the record detracts from its weight.’” *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted).

In rejecting the claimant’s testimony, the review examiner inferred that the claimant likely separated from employment because the school year ended. However, nothing in the record suggested that the claimant’s separation was related to the start or end of the academic year. In fact, on remand the record establishes that the claimant was required to work year-round, and neither her contract or terms of employment were connected to the academic year cycle. *See Consolidated Findings ## 4 and 5.* Therefore, we conclude the review examiner’s original inference regarding the circumstances of the claimant’s separation is unreasonable in relation to the record.

Because the claimant’s uncontradicted testimony indicates that she was laid off as a result of decreased revenue from lack of re-enrollment, we consider whether it constitutes an approved COVID-19 reason under the CARES Act.

The U.S. Department of Labor (DOL) recently issued new guidance about qualifying for PUA benefits. Its Unemployment Insurance Program Letter (UIPL) 16-20, Change 5 (Feb. 25, 2021) expands upon the approved COVID-19 listed reasons under the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk). Specifically, UIPL 16-20, Change 5 explains that the DOL has determined that a claimant may be eligible for PUA benefits if the individual is “an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19

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

public health emergency.”² The DOL has made this COVID-19 reason retroactive to the beginning of the PUA program.³

The claimant’s former employer, a private school system funded solely by tuition, determined that it needed to lay off staff because it was experiencing a substantial decline in student re-enrollment as a result of the economic impact of the COVID-19 pandemic. Consolidated Findings ## 2, 6, and 7. Subsequently, the employer informed the claimant that her employment contract would not be renewed for the next fiscal year. *See* Consolidated Findings ## 4 and 8. Under these particular circumstances, we are satisfied that the claimant presented sufficient evidence to show that she became unemployed due budget cuts resulting from the impact of the COVID-19 pandemic, a circumstance which falls within the U.S. Department of Labor’s approved reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

We, therefore, conclude as a matter of law that the claimant is in unemployment due to an approved COVID-19 reason under the CARES Act.

The review examiner’s decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning June 28, 2020, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 23, 2021



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

² *See* UIPL 16-20, Change 5, 4(a)(iii), p. 8.

³ *See* UIPL 16-20, Change 5, 3(a), p. 2.

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.

LSW/rh