

**The claimant was a seasonal employee of a water park for the previous five summers. His testimony and an email from his summer employer showed that he was to be rehired for the 2020 summer season, beginning June 1, 2020, but did not work due to COVID-19 shutdowns. The claimant established that he was unable to work for the reason listed under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg).**

**Board of Review  
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**Issue ID: N6-FJVJ-FJ2L**

### 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 we reverse.

The claimant filed a claim for PUA benefits with the DUA, effective May 31, 2020, which was denied in a determination issued on November 17, 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 10, 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 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. 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 the claimant was not entitled to PUA benefits because he failed to establish he was unable to start a summer job due 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 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 May 31, 2020.

2. The claimant spends part of the year in New Hampshire and part of the year in Massachusetts.
3. The claimant has a lease agreement for a campground in Massachusetts in his parents' names.
4. The claimant has no work history from the beginning of 2020.
5. Prior to filing his claim for PUA, the claimant last worked at a water park in Massachusetts until approximately September 2019.
6. The claimant has a 2019 W-2 Wage and Tax Statement issued by an employer and an email issued by an employer.
7. The claimant filed his claim for PUA when his summer employer could not open due to the COVID-19 emergency.
8. The claimant did not have a definitive start date for his 2020 summer job.
9. The claimant was issued a Notice of Non-Monetary Issue Determination dated November 18, 2020.
10. The claimant filed a timely appeal related to this Notice of Non-Monetary Issue Determination dated November 18, 2020.

### Ruling of the Board

In accordance with our statutory obligation, we review 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. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject Finding of Fact # 8, as it is not supported by the record. In adopting the remaining findings, we deem 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 did not prove he was unemployed for a listed COVID-19 reason under the CARES Act beginning the week ending June 6, 2020.

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.<sup>1</sup> 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 requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that he is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa) – (kk). One of those listed reasons is that an individual was scheduled to start employment and does not have a job as a direct result of the COVID-19 health emergency. *See* § 2102(a)(3)(A)(ii)(I)(gg); *see also* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1), p. I-7.

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

In this case, the record before us indicates the claimant was scheduled to start employment in the summer of 2020, but could not as a direct result of the COVID-19 health emergency. The review examiner, however, found that the claimant did not have a scheduled start date for the 2020 summer work season. *See* Finding of Fact # 8. As noted above, we reject this finding because it is unsupported by the record in its entirety.

During the hearing, the claimant testified that his start date for working at the water park was to be June 1, 2020.<sup>2</sup> The review examiner, however, appears to have deemed this testimony not to be credible. Such credibility assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to 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). Upon review of the entire record, we believe the review examiner's assessment is unreasonable in relation to the evidence presented.

The claimant provided uncontested testimony that he was to commence working for the employer on June 1, 2020. If the claimant's testimony had been the extent of the evidence presented, it would not be unreasonable for the review examiner to conclude that such testimony, by itself, was not substantial evidence. *See McDonald v. Dir. Of Division of Employment Security*, 396 Mass. 468, 470 (1986) (a review examiner is not required to believe self-serving, unsupported, evidence, even if it is uncontroverted by other evidence). But in this case, the record includes more.

At the hearing, the claimant testified that he spent the past five (5) summers working at the water park, usually beginning the last week of May or first week of June. The claimant also presented an e-mail from the Operations Manager at the park, stating that the claimant had submitted an application for the 2020 season, and that he would have been re-employed if the park was not closed due to COVID-19 restrictions. *See* Findings of Fact ## 5–7.<sup>3</sup> We do not believe the review examiner's implied credibility assessment is reasonable given the totality of this uncontested testimonial and documentary evidence in the record.

Based on his prior years of summer employment, the operations manager's email confirming that he would have been re-hired, and the June 1 date that the job would have begun, the claimant has established that, but for the pandemic, he would have been employed again by the water park in the summer of 2020.

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<sup>2</sup> This is also part of the unchallenged evidence in the record.

<sup>3</sup> This portion of the claimant's testimony and the email from the operations manager, while not explicitly incorporated into the review examiner's findings, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

We, therefore, conclude as a matter of law that the claimant has shown that he was unable to work for the reason listed under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning May 31, 2020, through the week ending September 5, 2020, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 13, 2021**



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)**

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.

TJG/rh