

**Construction worker had to stop work at his Massachusetts job site in March, 2020 due to the COVID-19 public health emergency. He is eligible for PUA benefits in any weeks where he earned less than his weekly benefit amount plus earnings disregard.**

**Board of Review  
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**Issue ID: N6-FK5R-D9KH**

### 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 affirm in part and reverse in part.

The claimant filed a claim for PUA benefits with the DUA, effective March 22, 2020, which was denied in a determination issued on September 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 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 working in Massachusetts in 2020 and that he stopped working for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. Thus, she concluded that 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 afford the claimant an opportunity to present additional evidence of his work in 2020 and to explain entries on his timesheet. 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 original decision, which concluded that the claimant was ineligible for PUA benefits because he did not establish that he performed and lost work in Massachusetts in March, 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) effective March 22, 2020.

2. The claimant filed the PUA claim using a Connecticut home address.
3. The claimant was an independent contractor, working construction for [Company A], a company located in [City A], CT at the time he became impacted by COVID-19.
4. Between January 6, 2020 and March 25, 2020, the claimant had been working for [Company A] at a jobsite known as [Jobsite A], which was located in [City B], MA.
5. Prior to closing down as of March 26, 2020, the [Jobsite A] jobsite had been closed on March 5, 2020, March 12, 2020, March 13, 2020, March 20, 2020 and March 23, 2020 to allow for cleaning and preparing to work in a site that had been affected by COVID-19. The claimant was not paid for the intermittent days in March 2020 when the job site was closed for cleaning and preparation.
6. The claimant had to leave the [Jobsite A] jobsite early on March 25, 2020 because the man with whom he carpooled had car trouble.
7. The job site at [Jobsite A] closed for good on March 26, 2020 due to an outbreak of COVID-19 at the job site location.
8. Because he had to leave work early on March 25, 2020, the claimant returned to the [Jobsite A] jobsite on May 4, 2020 and May 5, 2020 to clean up the jobsite, wrap up and harness the materials and “button up” what was left on the roof at the jobsite. He had to wait until May 4, 2020 for it to be safe to return to the site.
9. The claimant has a timesheet in the name of [Name A] confirming he worked at the [Jobsite A] jobsite for [Company A] between January 6, 2020 and March 25, 2020, and again on May 4, 2020 and May 5, 2020.
10. The claimant has a timesheet in the name of [Name A] confirming he worked at the [Jobsite B] jobsite in Connecticut for [Company A] on March 30, 2020. That is the only day he worked at the [Jobsite B] jobsite.
11. [Name A] is a nickname used by the claimant.
12. The claimant worked 11.75 hours for [Company A] at the [Jobsite A] jobsite during the week ending March 28, 2020. The claimant worked 8 hours for [Company A] at the [Jobsite B] jobsite in Connecticut during the week ending April 4, 2020. The claimant worked 18 hours for [Company A] at the [Jobsite A] jobsite during the week ending May 9, 2020. The claimant earned either \$40 or \$42 per hour while working for [Company A].

13. The claimant worked for [Company B] in 2019. They are located in [City C], MA.
14. The claimant started looking for a new job in early June 2020, because the reopening of the jobsite at [Jobsite A] kept getting delayed.
15. The claimant got a new job in June 2020 for a construction company located in [City D], MA. He was injured on the job in July 2020 and has been collecting workers' compensation since July 7, 2020.
16. The claimant only certified for PUA benefits for the weeks ending March 28, 2020 through June 13, 2020.

#### Credibility Assessment:

Although there are some inconsistencies and gaps in the documentation provided by the claimant, as to the overarching issues of whether he is [Name A], whether that is a nickname he used, whether he worked at a jobsite in Massachusetts in 2020 and whether he worked in Massachusetts in 2019, the claimant's testimony is deemed credible and his testimony has remained consistent on those key issues.

The claimant provided a Timesheet Report in the name of [Name A] for the period January 1, 2020 through December 31, 2020. The Timesheet Report does show that [Name A] worked for [Company A] at the [Jobsite A] jobsite from January 6, 2020 through March 25, 2020 and again May 4 and 5, 2020.

The claimant credibly testified that [Name A] is a nickname that he uses because he likes to fish and eat swordfish. He has submitted a signed letter from [Company C]. The letter indicates that the name [Name A] was used for the claimant in his employee time-tracking software, because the claimant had lost or damaged so many phones that the software would not let him use another version of the claimant's actual last name. While [Company C] is not the name of the company the claimant testified that he worked for, that company is listed the claimant's 2019 and 2020 tax documents (Remand Exhibits 6 and 8). The signed letter, the Timesheet Report, and the claimant's consistent testimony as to where he was working in 2020, support the position that he was working in Massachusetts in 2020 at the time he was impacted by the COVID-19 pandemic.

At the remand hearing, the claimant clarified that the emails he mentioned during the original hearing are actually GPS check-ins he would do on his phone. The claimant failed to produce documentation of those check-ins.

The claimant was also asked to produce documentation of where he worked in 2019 but has failed to do so. However, that the claimant produced his 2019 Non-Resident Massachusetts state tax return, which shows he had earnings in 2019 in Massachusetts [sic]. Although the claimant produced a federal and Non-Resident Massachusetts state tax return for 2019, he produced only a federal and Connecticut

tax return (Remand Exhibit 8) for 2020. He did not produce a Non-Resident Massachusetts tax return for 2020. Thus, although the claimant has failed to produce any specific documentation for where he worked in 2019, the totality of the evidence suggests that he did work in Massachusetts in 2019.

### 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. Based upon these new consolidated findings, we disagree with the review examiner's original legal conclusion that the claimant was not eligible for PUA benefits.

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 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 the person 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 he had work in Massachusetts that was impacted by the COVID-19 pandemic.

The claimant has filed a claim for PUA benefits, effective March 22, 2020. Thus, we consider whether he has shown that, at that time, he became unemployed due to the COVID-19 pandemic. The consolidated findings provide that from January through March, 2020, the claimant was working construction at a job site in Massachusetts. Starting on March 5, 2020, the jobsite closed intermittently and then shut down completely beginning March 26, 2020, due to the COVID-19 public health emergency. *See Consolidated Findings ## 3–7.* Although he returned briefly to this job site to clean up and put away equipment, and later had a short-term assignment at another job site, the record shows that his work was severely limited during the remainder of March, April, and May, until he found a new job on June 10, 2020.<sup>4</sup> He was not paid on days that he did not work. *See Consolidated Findings ## 5, 9, 10, 12, and 15.* Given these facts, it is evident that the

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

<sup>2</sup> 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* UIPL 16-02, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

<sup>4</sup> Although not in the consolidated findings, the claimant testified that he began a new full-time job on June 10, 2020. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

pandemic severely limited the claimant's ability to continue performing his customary work activities.

As the review examiner noted in Consolidated Finding # 16, the claimant has certified for PUA benefits only during the period March 22 through June 13, 2020. He is not entitled to any PUA benefits in any of those weeks where his net earnings from self-employment or gross earnings from wages exceeded \$356, which is the sum of his \$267 weekly benefit amount plus earnings disregard of \$89.<sup>5</sup> The only information in the record is that the claimant was paid \$40 or \$42 per hour. *See* Consolidated Finding # 12. Assuming he was paid \$40 per hour, the record shows that he earned \$470 for 11.75 hours of work during the week ending March 28, 2020, \$320 for 8 hours of work during the week ending April 4, 2020, and \$720 for 18 hours of work during the week ending May 9, 2020. *See* Consolidated Finding # 12.

In light of these earnings, the claimant is not eligible for any PUA benefits during the week ending March 28, 2020, the week ending May 9, 2020, and the week ending June 13, 2020, when he returned to full time work. For the week ending April 4, 2020, the claimant is eligible for partial PUA benefits. Of his \$320 earnings, \$89 is disregarded (\$320 earnings – \$89 earnings disregard = \$231). During this week, he is entitled to a PUA weekly benefit amount of \$36 (\$267 regular weekly benefit amount - \$231 = \$36).<sup>6</sup>

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he was out of work in Massachusetts for one of the eligibility reasons established by the U.S. Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

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<sup>5</sup> *See* CARES Act, § 2102(d)(2); UIPL 16-20, 4(a), p. 4, and Attachment I, C(11), p. I-10; and G.L. c. 151A, § 29(b).

<sup>6</sup> The reduced weekly benefit amount during this week does not affect the claimant's eligibility for the additional Federal Pandemic Unemployment Compensation payment to which he may be entitled during his claim.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled only to partial PUA benefits for the week ending April 4, 2020, if otherwise eligible. He is entitled to full PUA benefits during the weeks ending April 11 through May 2, 2020, and again during the weeks ending May 16 through June 6, 2020, if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

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



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.

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