

The claimant did not provide credible documentation establishing that he lost employment in Massachusetts as a direct result of the COVID-19 public health emergency.

**Board of Review
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Issue ID: N6-FL5R-DPHM

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 affirm.

The claimant filed a claim for PUA benefits with the DUA, effective March 1, 2020, which was denied in a determination issued on September 23, 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 3, 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. 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 evidence pertaining to the claimant's employment status in 2020. The claimant participated in 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 did not present sufficient evidence to show that he was out of work due to an approved COVID-19 related reason, 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 determination are set forth below in their entirety:

1. On August 12, 2020, the claimant filed a claim for Pandemic Unemployment Assistance (PUA) effective March 1, 2020.

2. The claimant indicated in his application for PUA that he was first impacted by COVID-19 as of March 1, 2020.
3. The claimant indicated in his application that he earned \$3,000 in 2019.
4. Prior to filing the PUA claim, the claimant was unemployed. He had no wages or earnings in 2019.
5. The claimant is 22 years old and attends college in Florida. He resides in Florida with his father.
6. The claimant's mother lives in Massachusetts. She is a self-employed lawyer who owns a law firm in Massachusetts.
7. The claimant has 4 checks totaling \$3,200 paid from his mother's law firm's account.
8. The claimant did not work in Massachusetts in 2020. He did not perform services for his mother's law firm in Massachusetts.
9. The claimant has a W-2 issued by his mother's law firm.
10. The claimant contracted COVID-19 on July 27, 2020. At that time, he was not working or supposed to be working in Massachusetts.
11. On September 23, 2020, the Department of Unemployment Assistance (DUA) sent the claimant a Notice of Non-Monetary Issue Determination COVID-19 Eligibility, informing him that he was not eligible to receive PUA benefits beginning the week ending February 8, 2020.
12. The claimant appealed the DUA's notice.
13. In his appeal, the claimant certified that he "was working in MASS full time."

Credibility Assessment:

The claimant offered inconsistent testimony throughout both hearings. Consequently, the testimony offered about working in Massachusetts is not deemed credible.

As to the inconsistent and not credible testimony, the following is noted:

The claimant testified in the first hearing that he was working 4 hours a day or about 20 hours per week. In his appeal, he said he was working full-time.

In the letter which the mother signed, the claimant's in-person employment dates (in Massachusetts) were given as May 24, 2020 to June 12, 2020. This contradicts

the testimony of both the claimant and the mother in the remand hearing, that the claimant started work in Massachusetts on April 20, 2020 and ended on June 12, 2012.

In his PUA application, the claimant certified that he earned \$3,000 in 2019. However, during the hearing, he admitted that he did not work in 2019.

When he filed his claim, the claimant certified that he was affected by COVID-19 as of March 1, 2020. However, he testified during the remand hearing that he stopped working in June of 2020. He also requested PUA benefits for the period of time he was supposedly working at the law firm. The claimant admitted at the hearing that for those weeks he worked, he certified for benefits saying he was not working and had \$0.00 income.

The reason the claimant gave when filing the PUA application was that he was a gig worker or self-employed person. At the hearing, the claimant testified that he was employed and was paid wages.

Finally, during the remand hearing, the claimant's mother testified that he was hired to help with the files and call clients back to reassure them about their pending cases. She also testified that her office had to close on June 12, 2020 due to COVID-19, and that the claimant physically helped her move the files to the attic at that time. The claimant did not initially testify as to moving the files or helping to close up the office.

Based on the above inconsistencies, the claimant and his mother were not found to be credible.

It is also noteworthy that the claimant was not forthcoming that his alleged employer was his mother, who is not an impartial witness in this case. Given the above inconsistencies in the testimony and the evidence created by his mother to assist him with obtaining PUA benefits, it is not clear whether he started work at his mother's law firm in Massachusetts at all. Thus, no findings of fact were made indicating that the claimant actually performed services in Massachusetts in 2020.

In summary, the claimant did not present credible evidence showing that he traveled to Massachusetts, that he worked at his mother's law firm, or that he stopped working due to COVID-19.

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.

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 he is a covered individual within the meaning of the CARES Act. After remand, the review examiner found that the claimant did not perform any work within the Commonwealth of Massachusetts in 2020. Additionally, there is no indication in the record that an offer of employment in Massachusetts was rescinded due to the pandemic. Based on the findings and the totality of the record before us, we conclude that the claimant did not lose employment in 2020 as a direct result of the COVID-19 public health emergency. Thus, the claimant has not met the criteria for PUA eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I) of the CARES Act. U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(a)-(k), p. I-4 – I-6.

We, therefore, conclude as a matter of law that the claimant has not 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) of the CARES Act.

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning March 1, 2020.

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

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.

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

SVL/rh