

Where the claimant stopped work voluntarily due to a family issue and general concerns regarding COVID-19, he was not out of work due to a listed COVID-19 related reason under the CARES Act. However, because a valid offer of summer employment as a law clerk for a Massachusetts law firm was rescinded due to COVID-19, he qualifies for PUA benefits for the period that he would have worked at this job.

**Board of Review
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Issue ID: N6-FL5T-77P2

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 May 10, 2020, which was denied in a determination issued on October 13, 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 16, 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 afford the claimant an opportunity to submit additional evidence to show that he had been working in Massachusetts in 2020, and that his work was affected by COVID-19. The claimant attended the remand hearing. Thereafter, the review examiner issued his 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 failed to provide sufficient evidence to show that he worked in Massachusetts in 2020, and that his work was negatively affected by COVID-19, 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 May 10, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. The claimant filed the PUA claim using a New Hampshire address.
3. The claimant is a law student in Massachusetts.
4. The claimant has leases showing a rental unit leased by the claimant from August 8, 2019 to July 31, 2020 and from August 1, 2020 to July 31, 2021.
5. The claimant's cable bills show the address of the leased property.
6. On March 17, 2020, the claimant's law school sent an e-mail stating the school would be closed on March 29, 2020.
7. The claimant's 2019 Federal Income Tax Return-Amended shows \$7,129 in wages and a 2019 Massachusetts Form 1-NR/PY Form shows \$5,599 in wages.
8. The claimant's 2020 1040 income tax return includes a Schedule C showing \$1,697 in income from [Company A]. The business address is [Town A], NH. The claimant did not file a MA Form 1-NR/PY showing MA income tax.
9. The claimant has a 2019 W-2 from [Company B] showing \$5058.75 in wages; a 2020 1099-N from [Company A] showing \$1,696 in compensation; and a 2020 W-2 from [Company C] showing \$720 in wages.
10. The claimant began working for [Company A] in May 2020 [sic]. He began working there in April 2020 and stopped working in June 2020 due to family issues.
11. The claimant has bank records for the period from January 1, 2020 through December 31, 2020. These documents show [Company A] income in May: \$1,291.54; June: \$399.82; and October: \$00.25.
12. The claimant worked 95% of his [Company A] deliveries in Massachusetts. He received work orders via an online application on his phone.
13. [Company A] provides no personal protective equipment or protective measures procedures other than door drop off at the delivery point.
14. The claimant stopped working at [Company A], because he was concerned about the lack of PPE offered by the company and lack of social distancing at the food pick-up restaurants.

15. The claimant worked for [Company C] when he had availability. The company is owned by his neighbor. The claimant was a laborer. The claimant worked two or three days per week for a few weeks when he was home from school in July and August 2020. The work was intermittent, and he did not have a regularly scheduled shift. The claimant was paid by check. He was paid \$720 in 2020 for this work.
16. The claimant has a fall 2020 law school calendar showing the first day of classes is August 31, 2020 and the end of term is December 18, 2020. His course schedule shows he was enrolled in Evidence M/W 7:35 p.m. – 9:00 p.m. during the fall 2020. This was a class that took place on campus in [Town B], MA. The remainder of his classes were online.
17. The claimant has a letter dated March 8, 2021, from [Company D] describing that the claimant had an offer of employment to begin work in May 2020 but that offer was rescinded in April 2020 due to the COVID-19 pandemic. The job was to begin on or around May 18, 2020. The job was in [Town B], MA. The pay was \$20 per hour. The position was for the summer of 2020 and was scheduled to end prior to classes beginning in the fall 2020. There was a possibility that the claimant could continue working for the employer following the summer, however, there was no firm offer that was rescinded regarding work beyond the summer.
18. The claimant owns a car. He uses it for work and school.
19. On September 25, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits beginning the week ending February 8, 2020.
20. The claimant appealed the DUA's determination.

Credibility Assessment :

The claimant's testimony was consistent and credible. He testified he began working for [Company A] in April 2020 and stopped working in June 2020. He stopped working voluntarily due to concerns regarding the COVID-19 health emergency, as well as undisclosed family issues. This testimony is supported by the banking records that the claimant submitted (Remand Exhibit # 8). The claimant testified his work was conducted primarily in MA. The claimant's new testimony about the letter (Remand Exhibit # 12) submitted with his [Board of Review] appeal regarding the summer internship at [Company D] in [Town B], MA, was credible. According to his testimony, the internship would have begun on or about May 18, 2020, and ended prior to the first day of classes on August 31, 2020. There was no *bona fide* offer of employment following the summer internship.

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. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant has not met his burden of showing that he was out of work for a reason listed under the CARES Act.

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. Individuals may be eligible for PUA benefits so long as they are unemployed or partially unemployed for a qualifying reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). 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.²

The claimant asserts, pursuant to objections (gg) and (kk), that he suffered a diminution in his services as a self-employed delivery driver, and that he received a valid offer of employment that was rescinded as a direct result of the pandemic. The criteria established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(gg), is that an individual was scheduled to commence employment and is unable to reach the job as a direct result of COVID-19.³ The criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk), is that an individual will be eligible for PUA benefits if the individual, is self-employed and experiences a significant diminution of his customary or usual services as a direct result of the COVID-19 public health emergency.⁴

In this case, the claimant filed a claim with a New Hampshire address. *See Consolidated Finding # 2.* During the initial hearing, the claimant testified that he was working in Massachusetts as a self-employed delivery driver and that he lost work as a result of COVID-19. In addition, the claimant asserted that he received a valid offer of employment from the new law firm and that the offer was rescinded as a result of COVID-19. However, because he failed to submit documentary evidence to support his testimony, the review examiner concluded that the record lacked substantial evidence to show that he was eligible to file a PUA claim in Massachusetts. We remanded the case for the review examiner to consider additional documentary evidence of the claimant's work and offer to work in Massachusetts in 2020 which he submitted with his Board appeal.

The consolidated findings provide that, in April, 2020, the claimant began working as a self-employed delivery driver for the food delivery company picking up food for customers and

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

² *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

³ *See* IPL 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1)(gg), p. I-7.

⁴ *See* IPL 16-20, Change 4, Attachment I, C(1)(kk), p. I-8.

delivering the food to their designated locations. *See Consolidated Finding # 10.*⁵ They further provide that the claimant conducted most of his deliveries in Massachusetts, as he was residing in Massachusetts to attend law school. *See Consolidated Findings ## 3 and 12.* The claimant, in June of 2020, voluntarily stopped working for the food delivery company, citing concerns about the lack of PPE from the food delivery company, and the lack of social distancing at site pick-ups. *See Consolidated Finding # 14.* The food delivery company did not have a policy of providing PPE equipment, and furthermore, the claimant had stopped working to address ongoing family issues. *See Consolidated Findings ## 10 and 13.*

Thus, the claimant stopped working not due to a diminution of available food delivery service work, but because he was concerned about his exposure to COVID-19. Nothing in the record indicates that he was advised by a health care professional to stop working. An individual who has not been advised by a qualified medical provider to self-quarantine, and who does not accept work due to general concerns of COVID-19, does not meet any of the COVID-19 criteria and is not eligible for PUA.⁶

However, in addition to his self-employment, the claimant contends that he had a valid offer of employment to work in Massachusetts, and that said offer was rescinded as result of COVID-19. The claimant was provided a written offer of employment on March 8, 2020, from the Personnel Resource Specialist of the new law firm. The letter noted the following: the claimant was given an oral offer of employment in March of 2020; that he was to commence work, as a law clerk, in May of 2020; and that said oral offer was rescinded in April of 2020, because of the COVID-19 pandemic. *See Consolidated Finding # 17.* The offer of employment was for the summer of 2020, the claimant was to be paid \$20.00 an hour, and he was to commence work upon completion of his spring exams. *Id.* As noted in the review examiner's credibility assessment, the claimant's start date was on May 18, 2020, with the position ending before August 31, 2020, when fall classes commenced.

The claimant has established that, but for the pandemic, he would have been employed by the new law firm for the week beginning May 17, 2020. However, the claimant has not shown that he would have continued working beyond the summer with the new law firm. Therefore, the claimant is no longer entitled to receive PUA benefits after August 30, 2020.

We, therefore, conclude as a matter of law that that the claimant did not prove that he experienced a significant diminution of his services due to the COVID-19 public health emergency within the meaning of CARES Act, § 2102(a)(3)(A)(ii)(I)(kk). We further conclude that he has shown that he was unable to work in Massachusetts for the reason listed under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg).

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive PUA benefits for the weeks beginning May 17, 2020, through August 29, 2020, if

⁵ The claimant's job description, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

⁶ *See* UIPL 16-20, Change 1, Attachment I, F, question 41, p.1-10.

otherwise eligible. The claimant is not entitled to receive PUA benefits during the week beginning August 30, 2020, and thereafter.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 8, 2021



Charlene A. Stawicki, Esq.
Member



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

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.

DY/rh