

The claimant worked between 60-70 hours during the week beginning September 20, 2020 in the hope that her work would be used and she would be compensated. As she was attempting to re-establish her self-employment, she met the PUA eligibility requirements under the CARES Act and 20 CFR § 625.4(g).

**Board of Review
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Issue ID: N6-FM22-N44K

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) denying the claimant 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 March 15, 2020. She certified for benefits for the week beginning September 20, 2020, but was denied benefits for that week in a determination issued on September 28, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination in a decision rendered on December 9, 2020. We accept the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not in unemployment as defined in G.L. c. 151A, §§ 29(a) and 1(r)(2) during the week beginning September 20, 2020, and, thus, was ineligible for 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 in unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), because she performed approximately seventy hours of work during the week beginning September 20, 2020, 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 March 15, 2020.

2. Prior to filing for benefits, the claimant was self-employed as a full-time author, cartoonist, and artist.
3. The claimant certified for PUA benefits for the week ending September 26, 2020, answering that she worked full-time at home during this week and earned no income.
4. During the week ending September 26, 2020, the claimant worked approximately seventy (70) hours. She certified that she worked full-time because she did work in the hopes of receiving pay for her writing and cartoons. She has yet to realize any income from those efforts.

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 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 findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant was not in unemployment for purposes of PUA benefits during the week on appeal.

Specifically, the review examiner determined the claimant was not eligible for benefits during the week beginning September 20, 2020, because she worked between sixty and seventy hours that week. Ordinarily, a claimant who works full-time hours during a week is deemed to be unavailable for new employment and would be ineligible for regular unemployment benefits under G.L. c. 151A, §§ 29 and 1(r). However, the claimant in this case seeks PUA benefits, a new unemployment benefit program provided under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and administered by the U.S. Secretary of Labor.¹ Section 2102(h) of the CARES Act directs us to apply the federal Disaster Unemployment Assistance regulations to the PUA program, unless they conflict with the language of the act.

The Disaster Unemployment Assistance regulations at 20 CFR 625.4, provide, in relevant part, as follows:

An individual shall be eligible to receive a payment of [Disaster Unemployment Assistance] with respect to a week of unemployment, in accordance with the provisions of this Act and this part if: . . .

(g) The individual is able to work and available for work within the meaning of applicable State law: *Provided*, That . . . in the case of an unemployed self-employed individual, the individual performs service or activities which are solely for the purpose of enabling the individual to resume self-employment[.] (Emphasis in original).

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

The claimant is a self-employed author, cartoonist, and artist. Finding of Fact # 2. She hoped that she would eventually be paid for the writing and illustrations she completed and submitted during the week in question. Finding of Fact # 4. As the purpose of her work that week was to attempt to re-establish her means of self-employment, she meets the able and availability requirements of 20 CFR § 625.4(g) and may not be disqualified from receiving PUA benefits.

We, therefore, conclude as a matter of law that the claimant was in unemployment for purposes of PUA benefits during the week beginning September 20, 2020.

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning September 20, 2020, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 30, 2020



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.

LSW/rh