

To be available for work under G.L. 151A, § 24(b), the claimant, a non-citizen, must show USCIS employment authorization during his benefit year. The claimant demonstrated that he had USCIS employment authorization during his base period, but only during a portion of his benefit year. Therefore, he is eligible for PUA benefits only while his USCIS employment authorization was approved.

**Board of Review
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Issue ID: N6-FM6H-KTJ7

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 8, 2020, which was initially approved. The DUA issued a redetermination on December 22, 2020, denying PUA benefits beginning with the week ending September 19, 2020. The claimant appealed the redetermination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on February 19, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had not been granted authorization to work in the United States by the U.S. Government during his benefit year and, thus, he was ineligible for benefits under G.L. c. 151A, § 24(b). 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 provide new evidence showing that the U.S. Citizenship and Immigration Services (USCIS) had authorized him to work during his benefit year. 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 original decision, which disqualified the claimant from receiving any PUA benefits due to lack of employment authorization in his benefit year, is supported by substantial and credible evidence and is free from error of law, where the claimant has presented a new Employment Authorization Card showing work authorization beginning February 22, 2021.

Findings of Fact

The review examiner's consolidated findings of fact are set forth below in their entirety:

1. The claimant filed a Pandemic Unemployment Assistance (PUA) claim with an effective date of March 8, 2020.
2. On December 22, 2020, the Department of Unemployment Assistance (DUA) issued a Notice of Non-Monetary Redetermination – Work Authorization to the claimant, stating that he was not eligible for PUA benefits beginning the week ending September 19, 2020.
3. The claimant had a United States of America Employment Authorization card issued on September 16, 2019 and which expired on September 15, 2020. The card states “This card is not evidence of U.S. citizenship or permanent residence.”
4. The claimant filed for renewal of his United States of America Employment Authorization on October 19, 2020.
5. The claimant has a Social Security card issued on December 31, 2019, by the Social Security Administration. The card states “VALID FOR WORK ONLY WITH DHS AUTHORIZATION.”
6. The claimant has a Massachusetts Driver’s License which was issued on June 4, 2019 with [sic] expiration date May 23, 2022.
7. The claimant has a Notice of Action (I-797) dated February 22, 2021, from United States Citizenship and Immigration Services regarding the approval of his employment authorization application.
8. The claimant is authorized to work in the United from February 22, 2021, until February 21, 2022. The claimant has a United States of America Employment Authorization card valid from February 22, 2021, until February 21, 2022.
9. The claimant was not authorized to work in the United States from September 16, 2020, until February 21, 2021.

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. However, we conclude that the claimant may not be disqualified from receiving PUA benefits during his entire benefit year, as discussed more fully below.

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 available for work within the meaning of state law.²

The review examiner initially denied benefits after concluding the claimant had not established that he was legally authorized to work in the United States. In reaching this conclusion, the review examiner applied the state law provision under G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall . . . (b) Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted

As a state agency administering the unemployment insurance programs, we must also abide by U.S. Department of Labor (DOL) regulations governing eligibility for unemployment insurance. These regulations require that a non-citizen must be legally authorized to work by the appropriate U.S. agency in order to be considered “available for work.” Specifically, 20 C.F.R. § 604.5 — Application — availability for work, provides, in relevant part, as follows:

(f) Alien status. To be considered available for work in the United States for a week, the alien must be legally authorized to work that week in the United States by the appropriate agency of the United States government. In determining whether an alien is legally authorized to work in the United States, the State must follow the requirements of section 1137(d) of the SSA (42 U.S.C. 1320b-7(d)), which relate to verification of and determination of an alien’s status.

Thus, in order to find the claimant available for work under G.L. c. 151A, § 24(b), the claimant must show that during his benefit year, he was legally authorized to work by the appropriate U.S. agency, currently the USCIS.

In this case, the claimant’s PUA benefit year began March 8, 2020. He presented evidence showing that he had USCIS employment authorization prior to filing his PUA claim, from September 16, 2019, through September 15, 2020. *See* Consolidated Finding # 3.

The claimant initially demonstrated that he had applied for renewal of his prior work authorization on October 19, 2020, but did not show that his prior employment authorization had been extended. *See* Consolidated Finding # 4. Because the claimant’s employment authorization expired on September 15, 2020, the review examiner concluded the claimant did not establish that he was authorized to work in the United States as of September 16, 2020, and her initial decision properly disqualified him from receiving PUA benefits indefinitely, as of the week ending September 19, 2020.

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

² *See* CARES Act, § 2102(a)((3)(A)(ii)(I).

We remanded the case for the claimant to provide additional evidence regarding his efforts to obtain employment authorization. After remand, the review examiner found that the claimant's application for employment authorization was approved by the USCIS on February 22, 2021. See Consolidated Findings ## 7-8 and Remand Exhibits ## 6-9.

The review examiner also found that the claimant was not authorized to work in the United States from September 16, 2020, through February 21, 2021. See Consolidated Findings # 9. While the claimant is ineligible for PUA benefits during this period, he has nevertheless established that he became available for work and thus eligible for benefits again as of February 21, 2021.

We, therefore, conclude as a matter of law that the claimant became authorized to work within the meaning of G.L. c. 151A, § 24(b), and was thus eligible for benefits, as of February 21, 2021.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied PUA benefits from the week beginning September 13, 2020, through February 20, 2021. He is entitled to receive PUA benefits starting with the week beginning February 21, 2021, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 9, 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.

JPCA/rh