

PUA claimant demonstrated that he was authorized to work under a TN visa during his benefit year. This means that he was available to work under G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: N6-FM8M-2D7P

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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective June 28, 2020, which was approved. However, in a determination issued on October 26, 2020, the claimant was disqualified due to the claimant's failure to provide documents showing that he was authorized to work in the United States. 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 January 8, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to show that he was authorized to work, and, thus, the claimant was disqualified 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 consider additional documentation pertaining to the claimant's visa status and authorization to work in the United States, which had been submitted with his appeal to the Board. 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, a Canadian citizen, is not eligible for PUA benefits because he failed to demonstrate that he is authorized to work in the United States, 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 are set forth below in their entirety:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) which was determined to be effective June 28, 2020.

2. The claimant is a Canadian citizen, who was permitted entry into the United States on January 4, 2020 on a B-2 visa and February 19, 2020 on a TN visa.
3. The claimant entered the United States on a Canadian Passport. The picture on the passport resembles the claimant as he appeared at the hearing. The name on the Canadian passport and the I-94 printout is [Name A]. The passport number on the passport and I-94 printout is [Number A]. The U.S. Department of Homeland Security approved the claimant's TN visa until February 17, 2022.
4. When the claimant entered the United States on February 19, 2020, his TN visa indicated that his sponsoring employer was "[Company A]."
5. The claimant's TN visa dated August 01, 2019 shows the sponsoring employer as "[Company B]."
6. The claimant's 2019 W-2 indicates that his employer in 2019 was [Company C], a human resource outsourcing company.
7. On October 26, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue determination, informing him that he did not meet the eligibility requirements to receive PUA benefits under Section 2102 of the CARES Act of 2020, Public Law 116-136.
8. The claimant appealed the DUA's determination.

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. Based upon these new consolidated findings and the additional documents presented at the remand hearing, we disagree with the review examiner's legal conclusion that the claimant is not authorized to work in the United States.

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 available for work in the United States. In reaching this conclusion, the review

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

² CARES Act, § 2102(a)(3)(A)(ii)(I).

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 U.S. Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS). Here, the claimant seeks PUA benefits under a claim effective June 28, 2020. He must show that he was authorized to work during his benefit year, beginning June 28, 2020.

The claimant is a Canadian citizen with a TN visa. *See* Consolidated Finding # 2. TN is a non-immigrant status, which allows professionals from Canada and Mexico to work in the United States on a temporary basis pursuant to the North American Free Trade Agreement (NAFTA). *See* 8 C.F.R. § 214.6.³ The DHS regulations at 20 C.F.R. § 274a.2 – Verification of identity and employment authorization, provide, in relevant part, as follows:

(b)(v)(A) The following documents . . . are acceptable to evidence . . . employment authorization: . . .

(5) In the case of an individual who is employment-authorized incident to status or parole with a specific employer, a foreign passport with an Arrival/Departure Record, Form I-94 . . . bearing the same name as the passport and containing an endorsement by DHS indicating such employment-authorized status or parole, as long as the period of endorsement has not yet expired and the employment is not in conflict with the individual’s employment-authorized status or parole

³ *See also* uscis.gov/working-in-the-united-states/temporary-workers/tn-nafta-professionals (April 6, 2021).

The claimant has presented his Canadian passport, which includes his recent arrival/departure record, and a DHS printout of his Form I-94. *See Consolidated Findings ## 2 and 3.*⁴ The name on the passport matches the name of the Form I-94. The Form I-94 confirms his TN visa status and it shows that the claimant is lawfully admitted into the United States until February 17, 2022. *See Consolidated Finding # 3.* Finally, his passport contains a stamped endorsement by DHS on his last date of entry, February 19, 2020, authorizing employment for a specific employer. *See Consolidated Finding # 4.* This evidence satisfies the requirements under 20 C.F.R. § 274a.2(b)(v)(A)(5) to show that the claimant has been authorized to work in the United States during his benefit year.

We, therefore, conclude as a matter of law that the claimant is available to work within the meaning of G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning June 28, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 9, 2021



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

AB/rh

⁴ These documents were not separately marked as exhibits during the remand hearing. Because they were attached to the claimant's appeal to the Board, we assume the review examiner intended them to be part of the claimant's appeal, Remand Exhibit 2.