

**The claimant did not provide documentation establishing that he experienced a loss of business as a direct result of the COVID-19 emergency. He is not eligible for PUA benefits.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: N6-FM92-58VL**

### 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 February 9, 2020, which was denied in a determination issued on October 9, 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 22, 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 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 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. The claimant filed a claim for PUA benefits, with an effective date of February 9, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$290 per week on the claim.

2. The claimant has no earnings from January 1, 2020 until the effective date of his claim on February 9, 2020.
3. The claimant has no gross receipts or sales and no ordinary profit or loss in 2020.
4. The claimant has no documents or business records showing loss of business due to the COVID-19 pandemic.
5. The claimant has a 2019 1120S for the corporation, showing \$26,847 in ordinary business income.
6. The claimant has a 2019 1040 showing S-corporation income of \$26,847.
7. On October 9, 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.
8. The claimant appealed the DUA's determination.

#### Credibility Assessment:

The claimant's testimony regarding his employment is not credible. The claimant was asked to produce documentation to support his alleged work and how he was affected by the COVID-19 pandemic, as per the Board of Review remand order. No documents were received. The claimant also agreed to upload a 2020 income tax return and it was not received.

#### 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.<sup>1</sup> In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act. To be a covered individual, the claimant must show that he is unemployed, partially unemployed, or unable or unavailable to work because of a listed COVID-19 reason. § 2102(a)(3)(A)(ii)(I).

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

After remand, the review examiner found that the claimant did not have any earnings from his business in the 2020 calendar year, and he failed to provide documentary evidence establishing that he experienced a loss of business as a result of the COVID-19 emergency. Based on these findings, we cannot conclude that the claimant lost employment in 2020 as a direct result of the COVID-19 emergency. Thus, the claimant has not met the criteria for PUA eligibility under § 2102(a)(3)(A)(ii)(I).

We, therefore, conclude as a matter of law that the claimant has not met his burden to show that he was out of work for one of the eligibility reasons listed in § 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 February 9, 2020.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 14, 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](http://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.

SVL/rh