

Claimant did not establish a COVID-related reason for certifying, since he had last been employed in December of 2018 and did not have employment in 2020 that was affected by the COVID-19 public health emergency. He merely could not find work.

**Board of Review
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Issue ID: N6-FMDV-RV4P

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 September 20, 2020. Although the claim was initially approved, the claimant was issued a determination on October 5, 2020, denying PUA benefits for the week ending October 3, 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 for that week, in a decision rendered on December 22, 2020. 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 unable to work because of a COVID-19 listed reason pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and, thus, the claimant was not eligible for PUA benefits for the week ending October 3, 2020. 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 take additional evidence regarding the reason the claimant certified for PUA benefits that week. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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 was not affected by one of the COVID-19 listed reasons set forth under the CARES Act during the week at issue, 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 Pandemic Unemployment Assistance (PUA) which was determined to be effective September 20, 2020.

2. The claimant had been unemployed since December, 2018. After becoming unemployed in December, 2018, the claimant received regular unemployment benefits. The claimant has been actively seeking employment since last working in December, 2018.
3. The claimant filed for PUA benefits when he exhausted his regular UI benefits and extensions.
4. The claimant certified for PUA benefits for the week ending October 3, 2020, that he was not impacted by the COVID-19 public health emergency.
5. The claimant was not put out of work due to the COVID-19 public health emergency. He was not working for more than one and half years prior to the effective date of his [PUA] unemployment claim.
6. During the COVID-19 public health emergency, the claimant has not been able to become reemployed. It has been difficult to find a job. The claimant also takes care of his two minor children at home.
7. The claimant has two children residing with him. The date of birth of the children are June 3, 2016, and December 16, 2017.
8. The claimant's wife resides with the claimant and his children, but she works full-time as a teacher and is unable to provide childcare for the children.
9. Prior to the pandemic, the claimant sent his children to daycare. However, the claimant stopped sending his children to daycare to avoid them from being exposed to the virus.
10. Although the claimant is actively seeking employment since he lost his job in December, 2018, he is unable to find a job. The claimant wants to find a job, so he can hire a nanny who can stay at home with his children.
11. During the week ending October 3, 2020, the claimant mistakenly answered that he was not impacted by the COVID-19 public health emergency.
12. During the week ending October 3, 2020, the claimant did not work and was looking for a job. The claimant was also taking care of his children at home, who cannot go to daycare due to COVID-19.

Credibility Assessment:

The claimant testified that he has a son with a lung condition, who cannot attend daycare due to COVID-19, and that is why the claimant has to stay at home with his children. The claimant was given until January 28, 2021, to submit additional evidence to support this testimony. The claimant explained during the hearing that

he should be able to provide a doctor's note. The claimant failed to provide additional evidence by January 28, 2021. Therefore, it is not found that the claimant's son has a lung condition.

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.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. Among the criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is that an individual will be eligible for PUA benefits if the individual was "unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities." U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(k), p. I-6.

After remand, the review examiner found that the claimant had been unemployed since December of 2018. He filed for and received regular unemployment benefits after last working in December of 2018, and filed for PUA benefits when he exhausted his regular unemployment benefits and extensions. *See Consolidated Findings ## 2–3 and 5.*

When the claimant certified for PUA benefits for the week ending October 3, 2020, he indicated that he was not impacted by the COVID-19 public health emergency. *See Consolidated Finding # 4.* Subsequently, the review examiner credited the claimant's claim that he had "mistakenly answered" that he was not affected by COVID-19 during that week. *See Consolidated Finding # 11.*

However, the claimant's errant response when certifying during the week at issue does not compel a conclusion that his employment had been affected by COVID-19. As noted above, the review examiner found that the claimant had been out of work since December of 2018 (Consolidated Findings ## 2 and 5), which predated the COVID-19 public health emergency by well over a year.

We, therefore, conclude as a matter of law that the claimant has not met his burden to show that he was out of work in Massachusetts for one of the eligibility reasons established by the U.S. Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

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

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits for the week ending October 3, 2020.

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