

The claimant's job offer in MA was rescinded when, as a result of COVID-19, the employer decided to retain only existing staff. He was unemployed due to one of the reasons listed in the CARES Act and is eligible for PUA benefits.

**Board of Review
19 Staniford St., 4th 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-FMK9-34KJ

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 1, 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 January 11, 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 history and status in 2020. The claimant attended 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 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 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 01, 2020.
2. Prior to filing for PUA, the claimant was unemployed and did not work in 2020.

3. The claimant does not have documentation to show that he was living in Massachusetts around the effective date of his claim. The claimant does have a health letter sent to the address associated with the PUA claim, dated December 2020.
4. The claimant worked for [Company A] after 2014.
5. The claimant worked for [Company A] in 2018 for one week, and in 2017.
6. The claimant opened a regular UI claim with an effective date of January 01, 2020.
7. According to an Appeal Hearing Results document from UI Online, the claimant was deemed Indefinitely Ineligible for the claim Issue ID #: 0033 3300 16-03 with the effective date of January 01, 2020.
8. The claimant's UI Application with the benefit claim effective date of January 01, 2020, indicates that he was employed with [Company B] from February 01, 2019 through June 07, 2019, [Company C] from June 09, 2019 through September 20, 2019, and [Company D] from October 1, 2019 through December 01, 2019. These companies were in Massachusetts.
9. The UI Application does not show that the claimant worked for [Company A] in 2019. The claimant did not work for [Company A] in 2019.
10. The Fact-Finding Summary in a brief description indicates that he was discharged from his most recent job with [Company D] due to absenteeism and tardiness.
11. According to the Lack of Work Notification, [Name A] is listed as the employer representative. His number is listed as [X], and it is signed by a [Name A] ("employer representative").
12. The claimant has a letter, signed by the employer representative, indicating that [Company A] was going to hire the claimant on March 01, 2020, but due to COVID-19 they were unable to do so. The letter has a similar signature and phone number to those on the Lack of Work Notification. The letter was written in March of 2020.
13. The claimant did not initially start the position with [Company A] in 2020, because he was trying to collect regular UI at the time. After his regular UI issue was resolved, he was able to start work with [Company A]. However, the employer representative told him that he was unable to hire him due to the pandemic.
14. As a result of the COVID-19 pandemic, [Company A] closed. When it was able to be re-opened, the business did not hire the claimant back due to limited

positions and the desire to keep the same individuals that were previously employed.

15. The claimant has not found any other employment.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We set aside the portion of Consolidated Finding # 13, which states that the claimant did not initially start the position with [Company A] in 2020, because he was trying to collect regular unemployment at that time. Although the claimant's testimony was somewhat clumsy and confusing, the totality of what he stated on this issue indicates that he was waiting for his start date with [Company A] to arrive so that he could stop collecting regular unemployment benefits.¹ Thus, there is no indication in the record that the claimant chose to postpone his start date with [Company A] in order to continue receiving regular unemployment benefits. Additionally, we note that Consolidated Finding # 12 states that the claimant's start date was March 1, 2020, but the employer had clarified that the claimant was scheduled to start his position in mid-March, 2020. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant did not show he was unemployed as a result of the COVID-19 pandemic.

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.² 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)(gg), is that an individual will be eligible for PUA benefits if he was "scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency." U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(g), p. I-5.

The claimant here was offered a position in Massachusetts with a party rental company, which also hosts on-site events. The claimant was scheduled to start employment in mid-March 2020. However, the employer rescinded its job offer to the claimant after it was required to close its business in accordance with the executive orders issued as a result of the COVID-19 public health emergency. When the employer reopened its business later in the year, it was still unable to hire the claimant due to the ongoing impact of COVID-19. Based on the evidence in the record before us, we believe the claimant has shown that he was unemployed in 2020 as a direct result of the COVID-19 emergency.

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

² Pub. L. 116-136 (Mar. 27, 2020), § 2102.

We, therefore, conclude as a matter of law that the claimant has 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)(gg) of the CARES Act.

The review examiner's decision is affirmed in part and reversed in part. We affirm the part of the decision denying benefits to the claimant for the weeks ending March 7, 2020, and March 14, 2020, as the claimant was not scheduled to start work until mid-March, 2020. However, we reverse the part of the decision denying benefits to the claimant as of March 15, 2020, as the claimant is entitled to benefits as of this date, and for subsequent weeks, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 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.

SVL/rh