

**The claimant was unemployed due to one of the reasons listed in the CARES Act, as the place where he was to perform his services closed as a direct result of the COVID-19 emergency. He is eligible for PUA benefits.**

**Board of Review  
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Chairman  
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Member  
Michael J. Albano  
Member**

**Issue ID: N6-FMKK-KMJM**

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 denied in a determination issued on October 23, 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 10, 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 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 and credibility assessment are set forth below in their entirety:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) with an effective date of March 8, 2020.
2. The claimant filed his claim with a North Carolina address.

3. On October 23, 2020, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive PUA benefits beginning the week ending February 8, 2020.
4. In 2019, the claimant worked as a self-employed musician. The claimant worked with three separate entertainment companies performing his services.
5. The claimant has three 2019 1099s, one for each entertainment company. Two of the companies have a Massachusetts business address. In total, the claimant earned \$21,850.00 in 2019.
6. The claimant primarily worked for one entertainment company, which was based in [City A], Massachusetts. The claimant has worked with this company since 2016 and continued to work with them until 2020. The claimant receives all of his work assignments and payments from the company's [City A] office. The claimant has a 2020 Combined Tax Statement from this company, dated February 11, 2021.
7. The claimant performed the majority of his events in Massachusetts with this entertainment company. Approximately 95% of the claimant's events were located in Massachusetts. The claimant performed in surrounding states, primarily Connecticut and Rhode Island, when he was not performing in Massachusetts.
8. In 2020, the claimant performed at two events, one on January 4, 2020, and one on February 1, 2020, both of which were located in Massachusetts. The claimant was scheduled to perform at 38 other events, most of which were located in Massachusetts, from March 31, 2020, until December 14, 2020.
9. On March 31, 2020, the claimant was scheduled to perform at an event in [City A]. The claimant's event was cancelled due to the COVID-19 public health emergency, which prompted a government shutdown and restricted large in-person gatherings. The claimant's events scheduled for the remainder of the year were also cancelled due to the in-person restrictions. The claimant's scheduled events are generally booked six to eight months ahead of time.
10. The claimant has not resumed working since March 31, 2020.

Credibility Assessment:

The claimant's testimony regarding his 2020 work is deemed credible. The claimant provided credible documentation showing that he worked in Massachusetts in 2020 and was scheduled to continue working in Massachusetts in 2020. He also offered credible evidence showing that he was unable to perform at

in-person events starting March 31, 2020, due to the COVID-19 public health emergency.

### 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. 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.<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. Among the criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act, is that an individual will be eligible for PUA benefits if his "place of employment is closed 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)(j), p. I-6.

The claimant here is a musician and worked for a Massachusetts entertainment company in 2020. The claimant's work consisted of performing at events, primarily in Massachusetts. In 2020, the claimant performed at two Massachusetts events for the employer in January and February, but he was unable to perform at any of his other 38 scheduled events for the year, because the events were all cancelled due to the COVID-19 restrictions on large in-person gatherings. The first of the claimant's events that was cancelled was in [City A] and scheduled for March 31, 2020. Based on the above, we believe the claimant has shown that he was unemployed in 2020, when the venues where he was scheduled to perform his services had to shut down as a direct result of the COVID-19 emergency.

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 an eligibility reason established by the U.S. Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act.

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

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 between the weeks ending March 14, 2020, and March 28, 2020, as the claimant did not lose employment as a result of the COVID-19 emergency until March 31, 2020. However, we reverse the part of the decision denying benefits to the claimant beginning on March 29, 2020, as the claimant is entitled to benefits as of this date, 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](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