

When the claimant attempted to return to work after a pregnancy leave of absence, the employer could not rehire her because its business had slowed due to the COVID-19 pandemic. Board held the claimant was unable to work for a reason listed under the CARES Act and she is eligible for PUA benefits.

**Board of Review
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Issue ID: N6-FMLT-47TK

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 February 16, 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 29, 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 she 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 conduct an additional hearing in order for the review examiner to consider further evidence related to a return to work offer and subsequent deferral of that return to work due to the COVID-19 pandemic. 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whether the review examiner's decision, which concluded that the claimant did not have evidence of a job offer that was rescinded due to COVID-19, and, therefore, she did not meet the requirements for PUA benefits under the CARES Act, is supported by substantial and credible evidence and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 February 16, 2020.
2. The claimant's primary language is Spanish.
3. Prior to filing her claim for PUA benefits, the claimant worked as a cashier for a money wiring service center since July 26, 2016. The service center employs five (5) people and provides money wiring, phone repair, and computer repair services.
4. In February 2019, the claimant became pregnant. The claimant spoke to the owner of the service center, [A], about taking a year off to focus on her pregnancy. The owner agreed and they planned for the claimant to return to work in February 2020.
5. In February 2020, the claimant was ready to return to work. She attempted to return to work but was told that due to the COVID-19 pandemic, the center's money wiring business, their main source of income, had slowed and they were unable to afford to hire the claimant back.
6. The claimant attempted to file for regular unemployment benefits. She was transferred to file a PUA claim. The claimant does not understand why they [sic] were told to file a PUA claim.
7. On February 5, 2021, the owner of the service center, [A], wrote the claimant a letter. The letter referenced the original agreement for the claimant to return to work in February 2020 and added that they could not rehire her due to COVID-19. The owner verbally told the claimant that the service center was still not interested in rehiring the claimant.

Credibility Assessment:

During the remand hearing, the claimant gave testimony regarding the February 5, 2021 letter. The claimant offered credible and honest testimony as to the circumstances surrounding her pregnancy, the leave of absence, her attempts to return to work, and the reason why she was unable to return to work. She also offered credible testimony as to the origins of the letter.

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. As

discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant does not meet the COVID-19 eligibility requirements to receive benefits.

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 she is a covered individual within the meaning of the CARES Act. Among the requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that she is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). One of those listed reasons is that an individual was scheduled to start employment and does not have a job as a direct result of the COVID-19 health emergency. *See* § 2102(a)(3)(A)(ii)(I)(gg); *see also* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1), p. I-7.

In this case, the claimant has shown that she was could not return to her existing employment as a direct result of the COVID-19 health emergency. The review examiner found that the claimant was to return to work in February, 2020, following her agreed upon leave of absence related to her pregnancy. *See* Consolidated Finding # 4. She attempted to return to work but was told that, due to the COVID-19 pandemic, they were unable to afford to give her work because the center's main source of income, its money wiring business, had slowed. *See* Consolidated # 5. On February 5, 2021, the owner of the service center wrote the claimant a letter. The letter referenced the original verbal agreement for the claimant to return to work in February, 2020, and added that they could not rehire her due to COVID-19. *See* Consolidated Finding # 7.

Based on the claimant's testimony and the owner's letter confirming that she was scheduled to return to work following her pregnancy, the claimant has established that, but for the pandemic, she would have been employed again in February, 2020, as agreed by her employer. Thus, she was unable to work due to a listed COVID-19 reason.

We, therefore, conclude as a matter of law that the claimant has shown that she was unable to work for the reason listed under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg).

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

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning February 22, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 13, 2021



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.

TG/rh