

**The claimant was a part-time adjunct assistant coach for a private school in Massachusetts, when the school closed due to COVID-19. She failed to show she would have been employed beyond her contract term ending in May of 2020. The claimant was therefore eligible for PUA benefits from time period of her termination date until her contract end date, and ineligible thereafter.**

**Board of Review  
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**Issue ID: N6-FNJT-HT78**

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 April 26, 2020, which was denied in a determination issued on December 22, 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 May 13, 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 afford the claimant an opportunity to submit additional evidence to show that she had been working in Massachusetts in 2020 and that her work was affected by COVID-19. 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 failed to provide sufficient evidence to show that she worked in Massachusetts as an adjunct athletic coach in 2020, and that her work was negatively affected by COVID-19, 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 Benefits (PUA) with an effective date of April 26, 2020.
2. The claimant filed the PUA claim using a Massachusetts home address and Vermont mailing address.
3. In 2019, the claimant lived and worked as an athletic coach for a crew team at a private school in Delaware.
4. In February 2020, the claimant accepted a job as an adjunct athletic coach for the crew team for a private school in Massachusetts (the private school).
5. The claimant's contract at the private school was for the period from March 1, 2020, to May 30, 2020, although the end date was flexible.
6. The claimant started working at the private school on or about February 20, 2020, on a part time basis.
7. The claimant's contract at the private school paid a stipend of \$2,900, prorated over the term of the contract. The contract did not include "benefits such as health insurance, retirement plan etc."
8. The claimant's work schedule at the private school was generally 6:30-8:00 a.m., five days per week before classes started. The claimant's afternoon schedule was generally between 1:00 p.m. to and [sic] 5:00 p.m. five days per week. Occasionally, the work hours would be adjusted depending on such variables as weather and the date of the next regatta.
9. The claimant's duties included teaching technique, strengthening, strategy and motivation of the crew team, in addition to the administrative work associated with the job.
10. The claimant's primary supervisor was the head coach. The athletic director was responsible for the entire program. The athletic director generally assigned the claimant's duties.
11. The claimant was paid every two weeks until on or about April 11, 2020.
12. The claimant stopped working on or about April 30, 2020, because the school closed because of the pandemic.
13. The claimant did not receive a check from the private school for the pay period ending April 25, 2020. When the claimant inquired about this to the human resources department, she was informed she was no longer employed.

14. On May 1, 2020, the athletic director informed her that the private school terminated her contract as of May 1, 2020, and that she would be paid through May 1, 2020. The claimant received another payment of \$400 in June 2020.
15. The private school paid the claimant \$1,600 of her stipend, which was prorated. The claimant has a 2020 W-2 from the private school showing wages of \$1,600.
16. The claimant infrequently performed babysitting duties during 2020 but had no set schedule. The claimant did not babysit after May 1, 2020.
17. The claimant accepted a full-time job as the campaign manager for a political campaign in Vermont. The claimant performed this work primarily in [city], Vermont. The claimant started this work on or about September 15, 2020, and ended on election day November 3, 2020. The claimant was paid a flat rate of \$3,000.

[Credibility] Assessment:

At the beginning of the hearing, the additional documents requested by the Board were submitted by the claimant and entered into the record.

The claimant's testimony throughout the hearing was clear, responsive, and concise. The hearing examiner had no concerns about the claimant's credibility. The claimant's testimony and corroborating documentation established that she was employed in Massachusetts in 2020 as an adjunct athletic coach at the private school, that the work was affected by COVID-19 on April 30, 2020, when the private school closed because of the pandemic, and that she was compensated a pro-rated amount of the stipend.

### 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 has not met her burden of showing that she was out of work for a reason listed under the CARES Act, since the week beginning April 26, 2020.

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 she is a covered individual within

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

the meaning of the CARES Act. Individuals may be eligible for PUA benefits so long as they are unemployed or partially unemployed for a qualifying reason listed under § 2102(a)(3)(A)(ii)(I)(aa)-(kk). One of those listed reasons is § 2102(a)(3)(A)(ii)(I)(jj), which states, “the individual’s place of employment closed as a direct result of COVID-19 public health emergency.” The claimant asserts, pursuant to subsection (jj), that her position terminated as a direct result of the pandemic.

The claimant was hired by a Massachusetts private school for the position of assistant rowing coach in the athletic department. Consolidated Finding # 4. The contract terms state the claimant was to start on March 1, 2020, and end on May 30, 2020, with the end date being flexible, and she was to be paid a \$2,900.00 stipend. Consolidated Findings ## 5 and 7. The claimant worked part-time in the athletic department until on or about April 30, 2020, when the school closed as a result of the COVID-19 pandemic. Consolidated Finding # 12. The school’s athletic director officially notified the claimant of her termination on May 1, 2020, and the claimant was compensated for her services up to her termination date. Consolidated Findings ## 14 and 15. These findings show that the school’s closure due to the COVID-19 public health emergency caused the claimant to stop performing her job in Massachusetts during the week beginning April 26, 2020, and, as a result, she could not continue working through May 30, 2020, the end of her contract.

The claimant contends that the team was scheduled to attend a national competition from June 11, 2020, through June 14, 2020, and, therefore, she should be entitled to benefits for this additional period. As evidence in support of her claim, the claimant provided a team schedule of important spring dates.<sup>2</sup> The schedule lists the national competition. However, written in parenthesis it states, “the top 2 G1s at NEIRAs qualify.” The team schedule also reflects that the NEIRAs was scheduled for May 23, 2020.<sup>3</sup> There is no evidence that shows that the school would have qualified for the national competition. Given this uncertainty, the claimant has failed to show that she would have worked beyond her contract date. She has not demonstrated that she was unemployed for a qualifying COVID-19 reason after May 30, 2020.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was working in Massachusetts when she became unemployed for a qualifying COVID-19 reason listed in § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act.

The review examiner’s decision is affirmed in part and reversed in part. The claimant is entitled to receive PUA benefits for the week beginning May 3, 2020, through May 30, 2020, if otherwise eligible. The claimant is ineligible for PUA benefits for the week beginning May 31, 2020, and for subsequent weeks thereafter.



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<sup>2</sup> The team’s schedule, Remand Exhibit # 9, while not explicitly incorporated into the review examiner’s findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. 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).

<sup>3</sup> The team schedule shows that there were no competitions or events scheduled between May 23, 2020, and the national competition on June 11, 2020.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 19, 2022**

Paul T. Fitzgerald, Esq.  
Chairman



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](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.

DY/rh