

During the first week on appeal, the claimant testified that she was not capable of or available for work for a non-COVID reason. She did not provide credible evidence to show she was out of work for a qualifying COVID-related reason during the second week on appeal. During those two weeks, she is not 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-FP94-L659
N6-FP2N-6NLN**

Introduction and Procedural History of this Appeal

The claimant appeals decisions 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 March 15, 2020. She was denied benefits for the week beginning October 25, 2020, in a determination issued on November 1, 2020, (Issue ID # N6-FP94-L659); and was further denied benefits for the week beginning November 1, 2020, in a determination issued November 7, 2020, (Issue ID # N6-FP2N-6NLN). The claimant appealed both determinations to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determinations and denied PUA benefits in two decisions issued on January 12, 2021, and January 28, 2021.¹ We accepted the claimant's applications for review.

Benefits were denied after the review examiner determined that the claimant failed to provide sufficient credible evidence to show 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 obtain additional information about the claimant's capability and availability for work during the week beginning October 25, 2020. 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 meet her burden to show that she was out of work for a qualifying COVID-19 reason, is supported by substantial and credible evidence and is free from error of law.

¹ While both issues were initially heard on the same day, the decisions were issued several weeks apart. As a result, the Board remanded Issue ID # N6-FP94-L659 before receiving the claimant's appeal for Issue ID # N6-FP2N-6NLN. However, as both issues were initially heard at the same time, are governed by the same section of law, and have the same operative facts, we have consolidated both issues into this decision.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment for Issue ID # N6-FP94-L659 are set forth below in their entirety:

1. The claimant filed a claim in June of 2020 for Pandemic Unemployment Assistance (PUA), and her claim is effective March 15, [2020.]
2. Prior to filing for PUA, the claimant worked as a security guard with a large security firm.
3. The claimant filed for PUA because two of her children were diagnosed with COVID-19.
4. For the week ending October 31, 2020, the claimant certified that she did not work and earned \$0. As to the COVID-19 reason for being out of work, the claimant certified, "A member of my household has been diagnosed with COVID-19." The claimant also certified that, other than COVID-19 reasons, she was not able and available to work.
5. During the week ending October 31, 2020, the death of the claimant's brother affected her to the point that her, "mindset wasn't on – it wasn't there." The impact was so severe that, even if she had no other issues affecting her ability to work and availability for work, she still would not have been not able and available for any work through the entire week.

Credibility Assessment:

The claimant provided credible testimony throughout the remand hearing. The claimant testified to multiple issues on which she also testified during the original hearing, and all such testimony matched her previous statements. Examples include testimony that during the week in question her children were sick, and the death of her brother would have prevented her from being able and available for any work through the entire week.

The review examiner's findings of fact for Issue ID # N6-FP2N-6NLN are set forth below in their entirety:

1. The claimant filed a claim in June 2020 for Pandemic Unemployment Assistance (PUA). The claim has an effective date of March 15, 2020.
2. Prior to filing for PUA, the claimant worked as a security guard with a large security firm, working 9:00 a.m. to 4:00 p.m. five days per week during a normal week.
3. The claimant filed her claim for PUA benefits because her employer closed on or around June 17, 2020, and laid off all employees, including the claimant.

4. The claimant certified for the week ending November 7, 2020, that she was not able or available for work for 7 days during that week because a member of her household had been diagnosed with COVID-19; that she was not able or available to work for reasons not related to COVID-19; and that she earned \$0 during the week ending November 7, 2020. The claimant reported both of her boys had been diagnosed with COVID-19.

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 findings for both claims are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusions are free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact in Issue ID # N6-FP94-L659 and the review examiner's findings of fact in Issue ID # N6-FP2N-6NLN and deem both to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessments are reasonable in relation to the evidence presented. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant failed to meet her burden to show she was out of work for a qualifying COVID-19 reason.

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 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) of the CARES Act.

During both hearings, the review examiner questioned the claimant thoroughly about the reason or reasons she was unavailable for work during both weeks on appeal. For the week beginning October 25, 2020, the claimant testified that she was not capable of or available for work primarily because her brother had passed away. Consolidated Finding # 5. As this is not a qualifying COVID-19 reason listed in § 2102(a)(3)(A)(ii)(I)(aa)–(kk) of the CARES Act, we conclude the claimant is not eligible for PUA benefits during the week beginning October 25, 2020.

While findings of fact pertaining to the week beginning November 1, 2020, do not contain the same level of detail as the consolidated findings pertaining to the week beginning October 25, 2020, we do not believe a further remand is necessary for us to complete our review.

For the week beginning November 1, 2020, the review examiner determined that the claimant did not provide credible evidence showing that she was out of work for a qualifying COVID-19 reason. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Because the claimant indicated she was unavailable for a reason unrelated to COVID-19 during

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

both weeks on appeal, we believe her lack of availability during these two consecutive weeks may be attributed to the same cause. As such, we see no reason to disturb the review examiner's credibility assessment on appeal.

We, therefore, conclude as a matter of law that the claimant did not meet her burden to show that she was out of work for a qualifying COVID-19 reason under § 2102(a)(3)(A)(ii)(I)(aa)–(kk) of the CARES Act.

The review examiner's decisions are affirmed. The claimant is not entitled to receive PUA benefits from the week beginning October 25, 2020, through November 7, 2020.



Charlene A. Stawicki, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 24, 2021



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

LSW/rh