

**Claimant, who was a farmer and handyman, had shown that he had suffered a diminution in his work as a result of COVID-19. The claimant had a reduction in farm equipment purchase orders due to fair closures and postponement of scheduled handyman projects. He was entitled to PUA benefits until his orders resumed.**

**Board of Review  
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**Issue ID: N6-FR22-75LK**

### 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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective April 12, 2020, which was denied in a determination issued on November 25, 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 March 1, 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 afford the claimant an opportunity to submit additional evidence to show that he had been working in Massachusetts in 2020, and that his work was affected by COVID-19. 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 failed to provide sufficient evidence to show that his farmer and handyman work in Massachusetts in 2020 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 Assistance (PUA) which was determined to be effective April 12, 2020.
2. The claimant lives in Massachusetts and is a self-employed farmer and handyman.
3. The claimant filed his 2019 and 2020 tax returns, including his Schedule C's and F's.
4. The 2019 and 2020 Schedule C's show that the claimant had gross receipts and sales of \$8,870.00 and \$11,220.00, respectively, from his job as a handyman.
5. The 2019 and 2020 Schedule F's show that the claimant had a net farm loss each year.
6. The claimant has a 2020 1099 showing \$1,500 in gross income.
7. The claimant has a 2020 W-2 from a Massachusetts town employer. The claimant was paid \$259.00.
8. The claimant has handwritten income ledgers for 2019 and 2020 that show the date of service, the customer name, the service performed, and the income received from the work.
9. The claimant has a business checking account with [Name A] Bank. Various deposits are reflected in bank statements dating from December 2019 until December 2020.
10. The claimant advertises his business through his website or by word of mouth.
11. The claimant belongs to the Massachusetts and the [Name B] Associations. The claimant also belongs to the [Name C] Association, which is in Maine.
12. The claimant does not directly derive any business by being in the associations. He derives some business indirectly, such as word of mouth recommendations based on his membership.
13. The claimant gets customers for his oxen business based on verbal recommendation of his existing or former customers. He also gets his business through his website.
14. The claimant hurt his back in 2018.
15. In 2018, one of the claimant's oxen broke its leg.

16. The agricultural fairs, which the claimant would attend to have his oxen compete in competitions and obtain business, normally ran from May until October each year.
17. The claimant enters his oxen at the fairs and is paid if his oxen wins. The claimant does not sell items at the fair, but takes orders for equipment before the fairs from customers who are competing at the fairs. The claimant also takes orders at the fairs and completes them later.
18. The claimant did not attend any fair in 2019, because his oxen broke its leg in 2018 and he was unable to compete due to his back injury. The claimant did not get any orders for oxen equipment or earn any income regarding any fair in 2019.
19. The claimant did not attend any fairs or receive any orders for oxen equipment at any fair in 2020, because the fairs were cancelled due to the COVID-19 health emergency.
20. The claimant did not perform any farrier work or receive any income from this work in 2019 or 2020, because of his 2018 back injury.
21. On April 10, 2020, the claimant received and completed one yolk order. The claimant had no work again until July 2020 through November 2020.
22. The claimant was contracted to work on his neighbor's house in June 2020. The claimant could not perform the job, because the neighbors did not want anyone at their home due to COVID-19 virus. The claimant was allowed to complete the job in October 2020.

#### Credibility Assessment:

During the remand hearing, the claimant credibly testified that he has an active handyman and farm business. The claimant submitted credible documentation that he has had an active handyman and farmer business. The claimant's tax documentation indicates this. The claimant also credibly showed that he advertises his business. The claimant submitted a screenshot of his website and a statement from the host. The claimant also has a statement from [Name D] Bank showing the payment for his website. The claimant testified that he hurt his back in 2018 and was unable to work as a farrier in 2019 and 2020 because of his injury. Therefore, the claimant's work as a farrier was not affected by the COVID-19 pandemic as he would not have been able to work even if the pandemic had not occurred. However, the claimant's direct and credible testimony was that he would typically get orders for oxen equipment before the fairs from customers who were competing at the fairs. He would also get orders while attending at the fairs to complete later. The claimant testified that he did not receive any equipment orders or earn any income for 2020 because the fairs were cancelled due to COVID-19. The claimant also testified that he was contracted to work on his neighbor's property in June 2020 but

was unable to begin working until October 2020 because the neighbors did not want anyone on their property. The claimant submitted a letter from his neighbor regarding this.

### 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 reject the portion of Consolidated Finding # 18, where the review examiner states that the claimant did not receive any orders for oxen equipment in 2019, as it is inconsistent with the claimant's testimony, Finding of Fact # 8, and Remand Exhibits ## 5, 9, and 10.

We further reject the portion of the credibility assessment, where the review examiner states that the claimant testified that he did not receive any equipment orders or earn any income for 2020, as it is in direct contrast to Consolidated Finding # 21, the claimant's testimony, and the evidence presented. These provide that the claimant's last order for oxen equipment, yokes and bow, was on April 10, 2020, and the claimant did not receive any new orders until July 21, 2020, as a result of the fair closures due to the pandemic.

In adopting the remaining findings, we deem 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 his burden of showing that he was out of work for a reason listed under the CARES Act.

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. In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act.<sup>1</sup> 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). Among the criteria for eligibility established by the Secretary of Labor in accordance with §2102(a)(3)(A)(ii)(I)(kk), is that an individual will be eligible for PUA benefits if the individual is self-employed and experiences a significant diminution of his customary or usual services as a direct result of the COVID-19 public health emergency.<sup>2</sup>

In this case, the claimant had to establish that, as a self-employed farmer and handyman, he had lost work due to the pandemic. During the initial hearing, the claimant established that he was working and residing in Massachusetts as a self-employed farmer and handyman. However, because he failed to submit documentary evidence to support his testimony, the review examiner concluded that the record lacked substantial evidence to show that he was eligible to file a PUA claim in Massachusetts. We remanded the case for the review examiner to consider additional documentary evidence showing the claimant's work in Massachusetts in 2020.

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

<sup>2</sup> See Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1)(kk), p. I-8.

After remand, the record in this case includes substantial evidence which establishes that the claimant was unable to continue to perform his work in Massachusetts due to the COVID-19 public health emergency. This evidence is now captured in the consolidated findings. The consolidated findings show that the claimant has resided and worked in Massachusetts as a self-employed farmer and handyman. They further show that he suffered a diminution in his income when he stopped receiving orders and when his handyman jobs were postponed due to the COVID-19 public health emergency.

The claimant has been a farmer for multiple years, on the family farm, and he advertises his business through his website, at fairs, and through customer referrals. The claimant handcrafted a variety of oxen equipment such as yokes, bows, sticks and carts, and that, during fair season, which runs from May until October of each year, the claimant would take orders for oxen equipment before and after the fair. When the orders were complete, the claimant would either deliver the product to the customer at the fair or mail it. In addition, customers and sometimes including their cattle, would go directly to claimant's farm to have measurements taken and equipment ordered.<sup>3</sup> The documentary evidence, as referenced in Consolidated Findings ## 8 and 19, show that the claimant's last order for oxen equipment was on April 10, 2020, and that there were no new orders until July 21, 2020, as the fairs were cancelled due to the COVID-19 public health emergency.

Regarding claimant's handyman business, the claimant contracted with his neighbor to build a deck, and that the work was to commence sometime in June of 2020. The neighbor informed the claimant that he wished to postpone the work, as he did not want anyone on the premises or in his home due to the COVID-19 pandemic. The neighbor authorized the claimant to begin work on the deck in October of 2020. *See* Consolidated Finding # 22.

Because the claimant has shown that he experienced a significant diminution of his customary or usual services because of the COVID-19 public health emergency, under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, he has established that he is eligible for PUA benefits from week beginning April 12, 2020.

However, the claimant has shown that his reduction in business activities due to COVID-19 only lasted up until July 21, 2020, when his orders for oxen equipment resumed. The evidence presented, supported by the claimant's testimony, shows that on or about July 21, 2020, his oxen equipment orders were back at their normal capacity.<sup>4</sup> At this point, since the claimant no longer suffered a diminution in his business, he is no longer entitled to receive PUA benefits.

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

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<sup>3</sup> *See* Consolidated Findings ## 16 - 18. We have also 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).

<sup>4</sup> The claimant's ledgers and testimony provide that, at this time, his orders resumed to their usual level. *See* Remand Exhibit 8. This evidence is also part of the unchallenged evidence in the record.

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning April 12, 2020, through July 18, 2020, if otherwise eligible. The claimant is not entitled to receive PUA benefits during the week beginning July 19, 2020, and thereafter.



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 29, 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](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