

**The claimant worked as a bartender and server at an outdoor beer garden. She was unable to continue her job, when the brewery moved its operation to their indoor space, because she resides with family members, who are immunocompromised and have health conditions that place them at high risk if they were to contract COVID-19. She stopped working based upon advice from her own doctor to quarantine to avoid putting these household members at risk. Held her circumstances align with CARES Act, § 2102(a)(3)(A)(ii)(I)(ff), and she is eligible for PUA benefits.**

**Board of Review  
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**Issue ID: N6-FRRV-V6TM**

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 October 25, 2020, which was denied in a determination issued on December 30, 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 19, 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, she was not eligible for PUA benefits. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not establish that she was unemployed due to a qualified COVID-19 reason, is free from error of law, where the claimant stopped working because she was advised by her health care provider to quarantine to protect several members in her household, whose immune systems would be compromised from exposure to COVID-19.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) with an effective date of October 25, 2020. The Department of Unemployment

- Assistance (DUA) determined that the claimant has a benefit rate of \$267.00 per week on the claim.
2. In the summer of 2020, the claimant worked as a bartender and server at an outdoor seasonal beer garden in Massachusetts. The claimant previously worked this job during the summer of 2019.
  3. In the fall of 2019, the claimant did not work as she was studying for her yoga teaching certificate.
  4. In January, February, and March of 2020, the claimant was living in Texas and working as a bartender. The claimant lost this job in March of 2020 due to COVID-19 and collected unemployment benefits until June of 2020.
  5. In June of 2020, the claimant started working at the outdoor beer garden where she had worked the previous summer in 2019. The claimant worked as a server and a bartender.
  6. The claimant worked 30 to 40 hours and earned approximately net \$600.00 to \$700.00 weekly.
  7. The claimant's 2020 W-2 from this job shows the claimant's earned wages of \$19,822.80.
  8. At the end of October of 2020, the beer garden moved its operations indoors.
  9. On October 25, 2020, the claimant voluntarily resigned from her position, because her job was moving indoors.
  10. The claimant resigned because she resides with three family members who have preexisting health issues, none of which are COVID-19.
  11. The claimant filed for Regular Unemployment Insurance (Regular UI) benefits after she resigned. The Regular UI claim was adjudicated, and the claimant was deemed ineligible due to voluntarily resigned [sic] from her job.
  12. The claimant filed for PUA benefits.
  13. The claimant is currently working part-time teaching virtual yoga.
  14. On December 29, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive benefits beginning the week ending February 8, 2020.
  15. The claimant timely appealed the DUA's determination.

### 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 are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portions of Findings of Fact ## 9 and 10 which indicate that the claimant resigned, as it is inconsistent with the evidence in the record showing that the claimant took a leave of absence. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we believe that the claimant has shown that 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.<sup>1</sup> In order to qualify for PUA benefits, the claimant must show that she is a covered individual within the meaning of the CARES Act, and demonstrate that she is unemployed, partially unemployed, or unable and unavailable to work for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)-(kk). The U.S. Department of Labor (DOL) has issued guidance in the form of examples for each of these listed reasons.

An eligible COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(ff), is that an individual is “unable to reach the place of employment, because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.” The DOL's examples include an individual who has been advised by a health care provider that he or she may be infected with COVID-19 and this requires him or her to quarantine, or an individual whose immune system is compromised by a serious health condition and is therefore advised by a health care provider to self-quarantine to avoid becoming infected by COVID-19.<sup>2</sup> However, the DOL emphasizes that its examples are not an exhaustive list, that states may consider other circumstances that align with one of the listed reasons and which are applied in a manner consistent with the examples.<sup>3</sup>

In this case, the claimant worked as a bartender and server at a brewery, specifically at an outdoor beer garden portion of the brewery. *See* Finding of Fact # 2. On October 25, 2020, the brewery moved its operations entirely to its indoor space, and the claimant requested a leave of absence due to the increased risk of contracting COVID-19 in an indoor space. *See* Findings of Fact ## 8–9. The claimant testified that three family members in her household have chronic medical issues that place them at high risk for complications if infected with COVID-19, and that she left her workplace to prevent her family members from contracting COVID-19. *See* Finding of Fact # 10. In support of her testimony, the claimant submitted Exhibit # 9, two letters from health care providers confirming that the claimant's family members have preexisting health issues, placing them at high risk for COVID-19 infection and complications. The claimant also submitted Exhibit 10, a letter from her health care provider, advising the claimant to quarantine and take all necessary COVID-19 precautions to protect her family members whose immune systems are compromised.<sup>4</sup>

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

<sup>2</sup> *See* DOL Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), Attachment 1, p. I-2.

<sup>3</sup> *See* UIPL 16-20, Change 6, Attachment 1, p. I-1.

<sup>4</sup> While not explicitly incorporated into the review examiner's findings, Exhibits 9, 10, and this portion of the claimant's testimony are part of the unchallenged evidence introduced at the hearing and placed in the record, and it

The review examiner disqualified the claimant, concluding that her fear of increased risk of contracting COVID-19 at an indoor restaurant and spreading it to her family members with preexisting health issues is not a specified COVID-19 related reason under the CARES Act. We disagree with the review examiner. The claimant's reason for leaving work, aligns with the DOL's examples under § 2102(a)(3)(A)(ii)(I)(ff). Although, in this case, it is not the claimant who is the individual with the underlying health condition, we think her circumstances are, for all intents and purposes, the same. This is not simply declining work due to a generalized fear of contracting the virus.<sup>5</sup> Here, the claimant has presented documentary evidence that her own doctor advised her to quarantine in order to protect the individuals in her household with pre-existing conditions from the high risk of complications from COVID-19.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was out of work for the listed COVID-19 reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(ff).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week ending October 31, 2020, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 13, 2022**



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)

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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>5</sup> See UIPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, F, question 41, p. I-10.

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.

KB/rh