

**The claimant was self-employed as a painter and handyman in Massachusetts until clients canceled contracts because they did not want other people in their homes due to increased risk of exposure to COVID-19. Held he was eligible for PUA benefits because the pandemic forced him to suspend his customary services.**

**Board of Review  
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**Issue ID: N6-FT78-M6VF**

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 March 1, 2020, which was denied in a determination issued on January 4, 2021. 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 18, 2021. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant failed to show 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 obtain additional evidence pertaining to the claimant’s self-employment in 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 his burden to show that he lost work as a painting and drywall contractor because of COVID-19, is supported by substantial and credible evidence and is free from error of law, where he had jobs lined up in early 2020 that were canceled because people were afraid to let others into their homes.

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 PUA benefits, with an effective date of March 1, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. In 2019 the claimant began self-employment in interior house painting and doing drywall work. He continued that work into 2020, 2021, and 2022. The claimant did the work for residents and businesses in and around [Location A], Massachusetts. His weekly schedule varied between 20 and 40 hours. The claimant obtained the painting and drywall work through word of mouth and by submitting proposals to prospective clients.
3. On January 6, 2020, the claimant submitted a proposal and contracted to begin work for a resident in [Location A], Massachusetts on February 11, 2020. The work was cancelled due to COVID-19. The client was not willing to allow the claimant into his home, out of concern over contracting the COVID virus.
4. The claimant had jobs lined up during and after March 2020.
5. On February 5, 2020, the claimant submitted a proposal and contracted to begin work for a nail salon in [Location A], Massachusetts on March 13, 2020. The work was cancelled due to COVID-19. The client was not willing to allow the claimant into her salon, out of concern over contracting the COVID virus.
6. On April 1, 2020, the claimant submitted a proposal and contracted on April 12, 2020 to begin work for a resident in [Location B], New Hampshire. The work was cancelled due to COVID-19. The client was not willing to allow the claimant into his home, out of concern over contracting the COVID virus.
7. On April 30, 2020, the claimant submitted a proposal and contracted to begin work for a resident in [Location A], Massachusetts on May 4, 2020. The work was cancelled on May 1, 2020 due to COVID-19. The client was not willing to allow the claimant into his home, out of concern over contracting the COVID virus.
8. On September 8, 2020, the claimant submitted a proposal and contracted to begin work for a resident in [Location C], Massachusetts. The work was cancelled on September 15, 2020 due to COVID-19. The client was not willing to allow the claimant into his home, out of concern over contracting the COVID virus.
9. The claimant was self-employed after March 2020.
10. The claimant performed the work on October 6, 2020 for a resident in [Location D], Massachusetts. He earned \$380.
11. The claimant performed the work on November 4, 2020 for the same resident in [Location D], Massachusetts. He earned \$313.

12. The claimant performed the work on November 25, 2020 for the same resident in [Location D], Massachusetts. He earned \$200.
13. The claimant performed the work on November 28, 2020 for the same resident in [Location D], Massachusetts. He earned \$400.
14. The claimant performed the work on December 2, 2020 for the same resident in [Location D], Massachusetts. He earned \$300.
15. The claimant performed the work on December 5, 2020 for the same resident in [Location D], Massachusetts. He earned \$675.
16. The claimant filed a 2020 federal tax return. The claimant also filed a 2021 federal tax return.
17. On June 1, 2021, the claimant submitted a proposal and contracted to begin work for an auto repair shop in [Location E], Massachusetts on July 26, 2021.
18. On March 25, 2022, the claimant submitted a proposal and contracted to begin work for a resident in [Location A], Massachusetts on May 30, 2022.
19. On April 15, 2022, the claimant submitted a proposal and contracted to begin work for the nail salon in [Location A], Massachusetts on June 13, 2022.
20. On May 13, 2022, the claimant submitted a proposal and contracted to begin work for the auto repair shop in [Location E], Massachusetts on July 27, 2022.
21. On January 4, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits beginning the week ending February 8, 2020.
22. The claimant appealed the DUA's determination.

Credibility Assessment:

While the claimant said he would upload his 2019 tax return and did not do so, this failure does not substantially detract from his credibility in this case. The claimant's testimony that he was self-employed before, during and after the COVID-19 pandemic was credible. His responses to questioning were forthright and consistent. His testimony was supported by clear, well-kept business records, and the documentation the claimant submitted was largely responsive to the Board of Review's remand order

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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to establish his eligibility for PUA 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.<sup>1</sup> In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act. Among the criteria for eligibility established by the Secretary of Labor pursuant to § 2102(a)(3)(A)(ii)(I)(kk), is that an individual will be eligible for PUA benefits if "unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities."<sup>2</sup> Further, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.<sup>3</sup> Therefore, in order to be eligible for benefits, the claimant must show that he had work in Massachusetts that was suspended due to the COVID-19 pandemic.

After remand, the review examiner found that the claimant was self-employed doing interior painting and drywall work in and around [Location A], MA, beginning in 2019 through 2022. Consolidated Finding #2. He further found that the claimant had work scheduled from March through September 2020 that was cancelled as a result of COVID-19. Consolidated Findings ## 3–8. These findings show that the claimant was self-employed in Massachusetts in 2020 when the COVID-19 public health emergency significantly limited his ability to perform his customary work activities, forcing him to suspend such activities.

However, we note that the review examiner also found that the claimant was able to resume his work activities from October 6, 2020, through December 5, 2020. Consolidated Findings ## 10–15. During the period when the claimant's services were no longer suspended and he was able to resume his customary business activities, he is not eligible for PUA benefits. Accordingly, the claimant is not eligible for benefits for the period encompassing the weeks beginning October 4, 2020, through the week beginning November 29, 2020.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that the COVID-19 public health emergency severely limited his ability to perform his customary work activities and he was therefore in unemployment within the meaning of the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied PUA benefits for the weeks beginning October 4, 2020, through the week beginning November

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

<sup>2</sup> See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Attachment I(C)(1)(k), p. I-6.

<sup>3</sup> See UIPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

29, 2020. The claimant is entitled to receive PUA benefits for the period of March 1, 2020, through October 3, 2020, and again for the week beginning December 6, 2020, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 29, 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)

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.

JCT/rh