

A full-time student was unable to continue working one of her jobs with the university when it shut the campus down due to the COVID-19 pandemic. She was eligible for PUA benefits through the end of the academic year, but not during the summer, while she worked a paid internship. Because she was laid off for an RA position in the 2020-21 academic year, she was again eligible for PUA benefits at the start of the new academic year.

**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-FT8D-7L6P

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 29, 2020, which was denied in a determination issued on January 5, 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 June 8, 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 obtain subsidiary findings of fact relating to the claimant's employment status during the period on appeal. 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 was not eligible for PUA benefits because she continued to get paid for one of her jobs after her college campus shut down due to the COVID-19 public health emergency, 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) benefits, with an effective date of March 29, 2020. The Department of

Unemployment Assistance (DUA) determined the claimant's weekly PUA benefit amount to be \$267.

2. Prior to filing for PUA, the claimant was a student at a Massachusetts university and worked two part-time jobs at the university she attended.
3. During the spring semester of 2020, which began in mid-January and ran through early May 2020, the claimant was hired to work part-time, eight hours per week as a Resident Assistant Contract (RAC) for the spring semester. The claimant was paid \$15.82 per hour for this position. Her gross bi-weekly salary for her RAC work was \$253.16.
4. The claimant also worked 8-12 hours per week at the front desk of an on-campus multicultural center. This position, in the spring semester was titled as either Student Academic Work Study (SAWS) or Student Academic Hourly (SAH) and paid the claimant \$12.75 per hour. The claimant worked at the multicultural center beginning January 19, 2020, until March 14, 2020.
5. The university campus closed on or about March 14, 2020 due to the COVID-19 pandemic emergency restrictions and all students, including the claimant, were sent home to commence remote learning.
6. After the school closed on or about March 14, 2020, the claimant continued to be paid for her RAC job until the end of her contract and the spring semester. The claimant was paid for her RAC job through April 24, 2020.
7. The claimant's paycheck issued to her on March 20, 2020, covers the previous two weeks, the period from March 1 through March 14, 2020. The paycheck shows the claimant had gross earnings in the amount of \$286.88 from her front desk position titled Student Academic Hourly (SAH), and \$253.16 from her Resident Assistant position titled Resident Assistant Contract (RAC). The claimant's total gross earnings for that two-week period of time were \$540.04.
8. The claimant did not receive any pay from this SAWS or SAH front desk position in the spring 2020 semester after the pay period ending March 14, 2020.
9. The claimant worked a paid summer internship between the Spring 2020 semester and the fall 2020 semester. The claimant worked full-time, 40 hours per week during the week ending July 11, 2020, through the week ending August 8, 2020.
10. The claimant did not declare her summer internship wages when requesting her weekly PUA benefit payments.

11. The claimant returned to campus for the fall semester on or about August 24, 2020. The fall 2020 semester begin on or around August 24, 2020 and ended on or around December 11, 2020.
12. When the claimant returned to the school campus on or about August 24, 2020, she did not resume her job at the multicultural center because the front desk position was no longer available.
13. The claimant was not scheduled to return to work as a “Resident Assistant Contract” RAC for any part of the fall 2020 semester and she did not receive any RAC wages for that time period.
14. The claimant began working at a new and different job in the multicultural center titled Student Academic Work Study (SAWS) in the fall of 2020 on or about October 25, 2020. This SAWS position paid the claimant \$12.75 per hour.
15. During the pay period between October 25, 2020, and November 7, 2020, the claimant received gross wages from her SAWS new position at the multicultural center in the amount of \$184.88.
16. During the pay period between November 8, 2020 and November 21, 2020 the claimant received gross wages from her SAWS new position at the multicultural center position in the amount of \$204.
17. During the pay period between November 22, 2020, and December 5, 2020, the claimant received gross wages from her SAWS new position at the multicultural center position in the amount of \$204.

Credibility Assessment:

The claimant credibly testified that she was working two jobs at a Massachusetts university during the spring semester of 2020 when the pandemic restrictions forced the closure of the campus and impacted her ability to work for the remainder of the spring semester. Although she was unable to live on campus after March 14, 2020, the claimant’s assertion that she continued to perform her RAC duties remotely and be paid her normal salary for her RAC job until the end of her contract and the semester is credible and further supported by university payroll records. Payroll records also substantiate the claimant’s testimony that she did not work and was not paid for her front desk SAWS or SAH job after March 14, 2020. Given that the 2020 spring semester did not end until early May, and the claimant was paid for her RAC work through the week ending May 9, 2020, it is reasonable to conclude the claimant would have continued working at her front desk SAWS/SAH position until that time had the campus remained open.

The claimant was not forthcoming about her summer internship work and her testimony surrounding her earnings and dates of employment was vague and evasive. The claimant alleged she mistakenly “forgot” about this employment when

questioned about her wages reported to the agency by the Department of Revenue. She reluctantly admitted she had in fact worked full-time for about five weeks during the summer of 2020 and acknowledged she failed to report these earnings when requesting her PUA weekly benefit payments. While the claimant contended the duration of the internship was reduced from 8 weeks to 5 weeks, this was not persuasive because she was not upfront with the initial dates she was scheduled to work. Additionally, she failed to mention the summer internship at all when initially questioned about her work history.

The claimant credibly testified that she returned to campus for the fall 2020 semester on or about August 24, 2020, and although she was hoping to get an RAC job, she admittedly was not scheduled to work as an RCA [sic] in the fall 2020 semester and did not get the job she was hoping to get. Documentation in the record supports the claimant's assertion that she began working part-time on campus on or about October 25, 2020, through the end of the fall 2020 semester. The claimant credibly testified that as of the date of hearing was still working at this job.

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 Consolidated Finding # 13 as inconsistent with the evidence of record. We further reject the portion of Consolidated Finding # 6 that indicates the claimant was paid for her Resident Assistant position through April 24, 2020, as it is also inconsistent with the record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. Additionally, we reject the portion of the review examiner's credibility assessment indicating that the claimant was not scheduled to work as a Resident Assistant as inconsistent with the evidence of record. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to show that her employment was impacted by the COVID-19 pandemic during the entire period on appeal.

The claimant in this case seeks PUA benefits, an unemployment benefit program provided under § 2102 of the CARES Act of 2020 and administered by the U.S. Secretary of Labor.¹ In order to qualify for PUA benefits, the claimant must show that she was a covered individual within the meaning of the CARES Act. Pursuant to the provisions of the CARES Act, the U.S. Department of Labor (DOL) has issued guidance about qualifying for PUA benefits. Its Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (Apr. 27, 2020), specifies that full-time students were eligible for PUA benefits as long as they were unemployed or partially unemployed for a qualifying reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk) of the CARES Act.² Among the criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is that an individual would be eligible for PUA

¹ Pub. L. 116-136 (Mar. 27, 2020), § 2102.

² See UIPL 16-20, Change 1, Attachment I, D (28), p. I-7.

benefits if the individual was an employee and the individual was laid off as a direct result of the COVID-19 public health emergency.³

The claimant was a full-time student living and studying at a university in Massachusetts. Consolidated Finding # 1. While studying at this college, she worked part-time as a Resident Assistant and part-time at the front desk of her university's multicultural center. Consolidated Findings ## 3 and 4. While the claimant continued to get paid for her resident assistant position after the university closed its campus due to the COVID-19 public health emergency, she was unable to continue working her front desk position through the end of the 2019–20 academic year. Consolidated Findings ## 6 and 8.

The claimant's paystubs, which were admitted into evidence as Exhibit 7, indicate that she was receiving pay for her Resident Assistant position through May 9, 2020.⁴ We can, therefore, reasonably infer that the claimant would have continued her employment at her university's multicultural center through that date were it not for the impact of the COVID-19 pandemic. As such, we conclude that the claimant met her burden to show that she was partially unemployed for a qualifying COVID-19 reason listed in § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act from March 29, 2020, through May 9, 2020. Because the claimant's gross weekly wages from her Resident Assistant position were substantially less than her PUA weekly benefit amount, she is eligible for benefits. *See* Consolidated Finding # 3.

However, the record shows that the claimant's circumstances changed substantially after the academic year ended. During the period beginning July 5, 2020, through August 8, 2020, the claimant worked a paid internship. Consolidated Finding # 9. As there is no indication from the record that the COVID-19 public health emergency impacted any employment opportunities during the summer of 2020, we do not believe she was in unemployment for a qualifying COVID-19 listed reason during the period between May 10, 2020, and August 22, 2020.

Regarding the period after the claimant's internship ended, the review examiner found that the claimant did not have any work scheduled that was impacted by the COVID-19 pandemic. *See* Consolidated Findings ## 12 and 13. Specifically, in his credibility assessment he noted that the claimant testified that she was not scheduled to return to work as a Resident Assistant for the 2020–21 academic year. 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). "The test is whether the finding is supported by 'substantial evidence.'" *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted.) "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted). Upon review of the record, we reject this portion of the review examiner's credibility assessment.

³ *See* UIPL 16-20, Change 6 (Sept. 3, 2021), Attachment I, (kk)(4), p. I-4.

⁴ Exhibit 7 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).

Contrary to the review examiner's finding, the claimant testified that she had been hired as a Resident Assistant for the 2020–21 academic year. However, she explained that the university had to lay off several Resident Assistants, including the claimant, after they learned only a relatively small percentage of students would be returning to campus due to the COVID-19 pandemic.⁵ As such, the record shows the claimant lost work as a result of the COVID-19 pandemic. Further, while the claimant did accept a new part-time position at the university's multicultural center, the record shows that her gross weekly wages were less than her weekly benefit amount for PUA benefits. *See Consolidated Findings ## 14–17.* In light of the claimant's uncontested testimony, we conclude that she met her burden to show that she was partially unemployed because her hours were reduced as a direct result of the COVID-19 public health emergency as of the start of the 2020–21 academic year, on or about August 24, 2020. *See Consolidated Finding # 12.*

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was partially unemployed for one of the eligibility criteria established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act from the week beginning March 15, 2020, through May 9, 2020, and again beginning August 23, 2020.

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 March 29, 2020, through May 9, 2020. The claimant is not entitled for benefits from the period beginning May 10, 2020, through August 22, 2020. The claimant is entitled to benefits for the week beginning August 23, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 10, 2022 Member



Charlene A. Stawicki, Esq.



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.

⁵ The claimant's testimony in this regard is also part of the unchallenged evidence introduced at the hearing and placed in the record.

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