

Security Company in Massachusetts had scheduled the claimant to work in February. Although his start date was delayed after that employer was purchased by another company, the offer was reconfirmed with new company. However, before he started, the job offer was rescinded due to the COVID-19 public health emergency. The claimant is 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-FTDJ-7HNR

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 February 2, 2020, which was denied in a determination issued on January 7, 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 10, 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 consider additional documents, which the claimant submitted on appeal, and to obtain other additional evidence about the nature of the claimant's alleged job offer, the dates it was to occur and its status amid changes to the prospective employer. 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decision, which concluded that the claimant was not unemployed because a job offer at a security services firm was rescinded due to the COVID-19 public health emergency, is supported by substantial and credible evidence and is free from error of law.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 PUA benefits, with an effective date of February 2, 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 did not work due to medical issues.
3. The claimant received a letter dated January 25, 2020 from a company in [City A], Massachusetts (company Y) offering him a consulting job as a financial advisor. The role was to maintain a positive business relationship with potential customers, advise the products team, and perform cost-benefit analysis. The start date for the job with company Y was to be February 5, 2020, pending a drug screening.
4. After the job offer, company Y became the target of an acquisition by a security company (company B).
5. The claimant learned his employment start date would be delayed by letter dated February 19, 2020 from company B's Executive Director titled "Notice of Company Reorganization." This letter bore the company B's logo (letterhead A). The start of the claimant's job was delayed because of an acquisition. This delay was not COVID-19 related. Company B acquired company Y.
6. With the February 19, 2020 "Notice of Company Reorganization," the claimant also received a revised offer letter from company B's Executive Director dated February 19, 2020 titled "Employment Offer Letter." This letter bore company B's logo and contact information (letterhead B). Company B was the company that would now be employing the claimant. The claimant's tentative start date with company B was March 2020.
7. The claimant's job title with Company B was to be Financial Advisor. His duties would include providing financial analysis services to customers and potential customers, specifically, highlighting the financial costs of unmet security needs and demonstrating the financial benefits of hiring company B.
8. With company B, the claimant's proposed salary was to be \$50,000 per year and his benefits were health insurance, paid overtime and a retirement plan. There was no change in these terms with company B from the original offer from company Y because company B committed to honor the claimant's original offer of employment from company Y.
9. The claimant learned his employment offer with company B had been rescinded by letter dated March 25, 2020 from company B's Executive Director titled "Letter to Rescind Job Offer." This letter was on letterhead A. Company B continued to hope to hire the claimant, but they were unable to provide the claimant with a start date due to the COVID-19 pandemic.

10. Company B has documents on letterhead B describing the nature of the business it provides. Company B provides security services at over 100 sites. The sites serviced and aspects of the services include concierge, residential, hotel, event, retail, construction, healthcare, dealership, campus, and security cameras.
11. The nature of company B relates to the job the claimant was offered in the January 25, 2020 letter he received from company Y because the claimant would maintain positive business relationships between company B and its potential customers, as well as advising the product team and performing cost-benefit analysis. For company B, the claimant would employ financial analysis to help customers understand the financial value of the security services such as how many security guards were necessary for its sites. The claimant would have been employed as a financial advisor at company B had his offer of employment not been rescinded.
12. On January 7, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits as of the week ending February 8, 2020.
13. The claimant appealed the DUA's determination.

Credibility Assessment:

Overall, this examiner finds the claimant's testimony and evidence to be credible. The claimant produced the documentation the Board of Review requested. The claimant's testimony was consistent, persuasive, and he was very forthright in his answers to the examiner's questions during the remand hearing. As one example, when this examiner questioned why company B, a security company, would need a financial advisor, the claimant offered a believable explanation about clients needing a financial analysis of how many security guards were necessary for its sites. Although the language within company B's February 19, 2020 Employment Offer Letter is substantially similar to the language within company Y's January 25, 2020 letter, this is not weighed to discredit company B's letter. It stands to reason that company B, who acquired company Y, could use the language from company Y's offer letter for its own offer of employment letter. Company B's letters are also on 2 different letterheads. This is also not weighed to discredit company B's letters. It is not unreasonable that a company could have a more formal letterhead listing its contact information and a less formal letterhead with only the company logo.

The claimant produced evidence of a delay in employment start date. The claimant's testimony that his hire was initially delayed by company B's acquisition of company Y that originally offered him the job was corroborated by company B's February 19, 2020 Notice of Company Reorganization letter.

The claimant produced a revised offer letter from company B, which was the February 19, 2020 “Employment Offer Letter.” The claimant offered credible testimony about this letter consistent with the letter itself.

The claimant produced evidence of rescission of employment. Specifically, the claimant’s testimony that his hire was further delayed because of the uncertainty surrounding the pandemic was corroborated by company B’s March 25, 2020 Letter to Rescind Job Offer explaining that the pandemic left company B unable to provide the claimant with a start date.

The claimant provided documents that described the nature of the business that company B provides. The claimant’s testimony and documentation on this point were also consistent. The claimant’s evidence about what the nature of his employment would have been after company B acquired company Y was company Y’s January 25, 2020 offer letter, company B’s February 19, 2020 “Employment Offer Letter” and the claimant’s credible testimony regarding his anticipated role.

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. As discussed more fully below, we disagree with the review examiner’s legal conclusion that the claimant was ineligible for PUA benefits.

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 To qualify for PUA benefits, the claimant must show that he 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 he is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). One of those listed reasons is that an individual was scheduled to start employment and does not have a job as a direct result of the COVID-19 public health emergency. CARES Act, § 2102(a)(3)(A)(ii)(I)(gg). In this case, the claimant’s offer of employment had faced other delays before its complete rescission. Therefore, evidence of COVID-19 impact on the claimant’s employment must be clear.

The record before us shows the claimant was scheduled to begin a job as a financial advisor for a security company, Company Y, which was to begin February 5, 2020, pending a drug screening. *See Consolidated Findings # 3.* However, the start of that work was delayed until March, 2020, because Company Y was to be acquired by Company B. *See Consolidated Findings ## 4 and 5.* Company B said that his start date would be delayed pending completion of the transaction. *See Consolidated Findings ## 5 and 6.* On March 25, 2020, however, Company B informed claimant

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

that, due to the public health emergency, they would not be able to set a new start date, effectively rescinding the offer. *See Consolidated Findings # 9.*

With this evidence, the claimant has established that his loss of a job offer was a direct result of the COVID-19 public health emergency.

While the claimant has shown that he lost work as a result of the COVID-19 pandemic, he has not shown an exact date of the loss of his employment. The evidence presented, including the March 25, 2020, letter do not state when the claimant would have started but for the pandemic. *See Consolidated Findings # 9.* However, the fact that Company's B's letter to rescind his job offer is dated March 25, 2020, indicates that he would not have started before this date. This means that he was not unemployed for a listed COVID-19 CARES Act reason until the week beginning March 22, 2020.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he was unemployed for the listed reasons under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg).

The review examiner's decision is affirmed in part and reversed in part. The claimant is not entitled to receive PUA benefits from his effective date of February 2, 2020, until March 21, 2020. The claimant is entitled to receive PUA benefits for the week beginning March 22, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 4, 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

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.

MS/rh