

Early in the pandemic, when COVID-19 tests were scarce, the claimant got sick with Coronavirus symptoms and she quarantined on the advice of medical providers. Claimant's illness overlapped with a date upon which she was to commence work at a café., Board held she was unable to work for the listed CARES Act reasons under the CARES Act, § 2102(a)(3)(A)(ii)(I)(aa) and (gg).

**Board of Review
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Issue ID: N6-FTLR-9JP5

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 23, 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 21, 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. 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 had not met her burden to show that she was unable to reach her place of employment because she was advised by a health care provider to self-quarantine, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed a claim for PUA benefits, with an effective date of February 23, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.

2. The claimant formerly worked as a cook at a private school in Massachusetts. While working there, she made the acquaintance of a colleague who later began her own business, a café and bakery. In the spring of 2020, the claimant visited her former colleague at her place of business and received an offer for employment.
3. The claimant has a letter from her former colleague and prospective employer dated April 12, 2021 attesting to the fact that in the spring of 2020 she offered the claimant a job. The claimant verbally accepted the job offer, but she did not report to work on the scheduled start date. When the claimant did not report to work and did not inform the prospective employer of her reasons for not reporting, the employer hired someone else for the job.
4. The claimant has a medical summary from a hospital emergency room visit on March 26, 2020. The claimant's vital signs were normal, and her chest x-ray was normal. The claimant's visit was prompted by symptoms of shortness of breath, cough, and headache.
5. On March 27, 2020, the claimant spoke with a nurse concerning her emergency room visit the prior day. The claimant was not tested for COVID-19 but advised to stay home. The claimant indicated that she suffers from allergies and requested a prescription for an inhaler, and the request was sent to the claimant's personal care physician for review.
6. The claimant certified in her PUA application that she was diagnosed with Coronavirus Disease 2019 (COVID-19) or was experiencing symptoms of COVID-19; and that she was unable to reach her place of employment because she was advised by a health care provider to self-quarantine.
7. On January 7, 2021, 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 through the week ending December 19, 2020.
8. The claimant 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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we disagree with the review examiner's legal conclusion that claimant is 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 (DOL)¹. In order to qualify for benefits, a claimant must show that she is a covered individual within the meaning of the CARES Act. Among the criteria for eligibility is that an individual was “scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency.” CARES Act, § 2102(a)(3)(A)(ii)(I)(gg). A second qualifying reason is that a person is unable or unavailable to work because “the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.” CARES Act, § 2102(a)(3)(A)(ii)(I)(aa). Generally, the DOL has interpreted this to mean an “individual has tested positive for COVID-19 or has been diagnosed with COVID-19 by a qualified medical professional, and continuing work activities...is not possible by virtue of such diagnosis or condition.”²

In this case, the claimant asserts that she was unable to start a new job because she became ill with what is believed to have been COVID-19. There is no doubt that she had a job offer. *See* Findings of Fact # 3. Rather, the question is whether she was unable to begin this job because she was unable to perform work due to experiencing COVID-19 symptoms.

Unfortunately, the claimant became ill early in the pandemic and, even though she visited an emergency room, she was not tested for COVID-19. *See* Findings of Fact ## 4 and 5. The DUA has recognized the difficulty of confirming COVID-19 status early in the pandemic. At that time, testing was scarce. To address this, it issued the following guidance concerning claimants who separated from employment due to COVID-19:

If an individual has left work due to a reasonable risk of exposure or infection (*i.e.* self-quarantine) . . . *no medical documentation will be required*. The claimant must establish only that his or her actions were reasonable under the circumstances.

DUA UI Policy and Performance Memo (UIPP) 2020.05 (Mar. 13, 2020) (Emphasis in the original.)

While the claimant’s medical records do not expressly diagnose the claimant with COVID-19, they note symptoms that are consistent with it. *See* Findings of Fact ## 4 and 5. Her documented symptoms (shortness of breath, cough, and headache) are consistent with symptoms that the Centers for Disease Control (CDC) identifies with COVID-19.³ Moreover, the claimant was advised to quarantine as of March 26, 2020, the date of her hospital visit. *See* Finding of Fact # 4. This advice was repeated when she spoke to a nurse the next day. *See* Findings of Fact # 5. Quarantine was, at the time, a standard recommendation for patients with upper respiratory symptoms. *See* Exhibit 7.⁴

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

² U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021) C(1)(aa), p. I-5

³ CDC, Symptoms of COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>, (last visited Jan. 7, 2022).

⁴ The claimant’s hospital record, Exhibit # 7, forms the basis of Findings of Fact # 4. It includes hospital’s standard recommendation at that time that all patients with upper respiratory symptoms quarantine. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *See* Bleich v. Maimonides

Under these circumstances, we are satisfied that the claimant's COVID-19-like symptoms and instructions to quarantine at the very end of March prevented her from starting a job in a café and bakery in April.⁵

However, the claimant's offer letter states that the claimant was to begin work in April 2020.⁶ Since nothing in the record indicates that she had lost work for a listed COVID reason before then, her eligibility for benefits begins at that time.

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

The review examiner's decision is affirmed in part and reversed in part. The claimant is not entitled to receive PUA benefits from her effective date of February 23, 2020, until April 4, 2020. The claimant is entitled to receive PUA benefits for the week beginning April 5, 2020, and for subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 8, 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

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).

⁵ See Board of Review Decision N6-FL5T-RFNR (July 9, 2021).

⁶ The claimant's start date is identified as merely spring 2020 in Findings of Fact # 3. However, "April 2020" is in the offer letter, Exhibit 8. This is also part of the unchallenged evidence introduced at the hearing and placed in the record.

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