

**The claimant was monetarily ineligible for regular unemployment benefits. He filed a separate claim for PUA benefits. As the start date of his job with a federal organization was delayed until August 9, 2020 because of the pandemic, he was eligible for PUA benefits through August 8, 2020.**

**Board of Review  
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**Issue ID: N6-FTP3-4N85  
0059 7760 46**

The Board of Review hereby issues this Consolidated Decision on the claimant's appeal of a denial of regular unemployment benefits in Issue ID # 0059 7760 46, and a partial denial of Pandemic Unemployment Assistance (PUA) benefits in Issue ID # N6-FTP3-4N85.

The claimant filed a timely appeal of the decision in Issue ID # 0059 7760 46. However, due to an unforeseen error, the Board did not receive and process the claimant's appeal at the time it was filed. As such, we now consider the claimant's timely appeal of Issue ID # 0059 7760 46. We further accept the claimant's application for review in Issue ID # N6-FTP3-4N85.<sup>1</sup>

#### Introduction and Procedural History of this Appeal

The claimant filed a claim for regular unemployment benefits with the DUA on October 26, 2020, which was effective October 25, 2020. In a determination issued on November 14, 2020, the DUA determined that the claimant was not monetarily eligible for regular unemployment benefits and his claim was denied. The claimant then filed a claim for PUA benefits on December 22, 2020, with an effective date of October 24, 2020. The claimant's PUA claim was denied on January 8, 2021.

The claimant appealed both determinations to the DUA hearings department. Following a hearing on the merits attended by the claimant, a review examiner affirmed the agency's initial determination in Issue ID # 0059 7760 46 in a decision issued on January 20, 2021. The review examiner denied the claimant's regular unemployment benefits on the ground that he did not have sufficient base period wages to be monetarily eligible for benefits under G.L. c. 151A, § 24(a). Subsequently, after a hearing on the merits of Issue ID # N6-FTP3-4N85, a different review examiner modified the agency's initial denial of PUA benefits in a decision issued on June 14, 2021. The review examiner found that the claimant had established that he was unemployed for a

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<sup>1</sup> Issue ID # 0059 7760 46 pertains to the claimant's monetary eligibility for regular unemployment benefits based on wages earned during the period between October 1, 2019, and August 31, 2020. Issue ID # N6-FTP3-4N85 pertains to the claimant's eligibility for PUA benefits as of April 1, 2020. As the claimant's eligibility for PUA benefits is contingent upon his ineligibility for regular unemployment benefits, our decision shall address the claimant's eligibility for benefits under both programs.

COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 during the period between April 1, 2020, and August 1, 2020.

The claimant now timely appeals both the decision in Issue ID # N6-FTP3-4N85, which denied him PUA benefits after August 1, 2020, as well as the denial in Issue ID # 0059 7760 46, which found him monetarily ineligible to receive benefits on a regular unemployment claim, effective October 25, 2020. Our decision is based upon our review of the entire record in both issues, including the recorded testimony and evidence from both hearings, the review examiners' decisions, and the claimant's appeals.

The first issue before the Board is whether the review examiner's decision in Issue ID # 0059 7760 46, which concluded that the claimant did not have sufficient base period wages to be monetarily eligible for regular unemployment benefits, is supported by substantial and credible evidence and is free from error of law. The second issue before the board is whether the review examiner's decision in Issue ID # N6-FTP3-4N85, which concluded that the claimant was in unemployment for an approved COVID-19 reason and eligible for PUA benefits only during the period between April 1, 2020, and August 1, 2020, is supported by substantial and credible evidence and is free from error of law.

#### Findings of Fact

The review examiner's findings of fact in Issue ID # 0059 7760 46 are set forth below in their entirety:

1. On 10/26/20, the claimant filed a claim for unemployment benefits effective 10/25/20.
2. On 11/14/20, the claimant was sent a Monetary redetermination informing the claimant that he had not earned enough wages in the base period of his claim to be eligible for unemployment benefits in Massachusetts.
3. The claimant requested a hearing on the redetermination that he was not monetarily eligible.
4. To be eligible for benefits, claimants must earn at least \$5,100.00 and must have base period earnings in excess of 30 times their benefit rate.
5. The claimant worked for the United States [Organization A] as a \$27.50 per hour Enumerator from 08/09/20 until his employment ended on 10/10/20.
6. The claimant's base period is the 4th Quarter of 2019, the 1st Quarter of 2020, the 2nd Quarter of 2020 and the 3rd Quarter of 2020.
7. During the 4th Quarter of 2019 and the 1st and 2nd Quarters of 2020, the claimant had total earnings of zero.

8. During the third Quarter of 2020, the claimant was working for the United States [Organization A] as a \$27.50 per hour Enumerator.
9. The claimant's total base period wages according to the employer were \$4,654.07.
10. The final bi-weekly check paid on 10/21/20 listed total year to date earnings of \$5,186.95.
11. If the total base period wages reported by the employer is used, it is less than the \$5,100.00 minimum for sufficient wages for eligibility.
12. If the total wages paid during the base period were \$5,186.95, as offered by the claimant, this amount is less than 30 times the claimant's benefit rate which would still make the claimant monetarily ineligible for unemployment benefits.
13. The claimant's weekly benefit rate is \$199.00.
14. If \$199.00 is multiplied by 30, this equals \$5,970.00 which is greater than the \$5,186.95 offered amount of base period wages.
15. The claimant's total base period wages are less than 30 times his weekly benefit rate even if the higher wage amount offered by the claimant is used.

The review examiner's findings of fact in Issue ID # N6-FTP3-4N85 are set forth below in their entirety:

1. The claimant filed a claim for PUA benefits, with an effective date of October 25, 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 filed a PUA claim. He lives in [Town A], Massachusetts.
3. In 2020, the claimant worked fulltime as a numerator/field service worker for the United States [Organization A]. The claimant's original start date was April 1, 2020, but it was postponed until August 1, 2020.
4. The claimant last worked on October 25, 2020. The claimant earned \$4,654 in gross income per his 2020 W2.
5. The claimant's job was suspended when [sic] U.S. [Organization A] stopped the [work] on October 15, 2020. The United States Supreme Court reversed an earlier lower court order that prevented the [Organization A] from stopping the [work].

6. On January 8, 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.
7. The claimant appealed the DUA's determination.

### Ruling of the Board

In accordance with our statutory obligation, we review the records and the decisions made by the review examiner to determine: (1) whether the findings for both issues are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusions in both decisions are free from error of law. Upon such review, the Board adopts the review examiner's findings of fact in Issue ID # 0059 7760 46 and deems them to be supported by substantial and credible evidence. Regarding the review examiner's findings of fact in Issue ID # N6-FTP3-4N85, the Board adopts the review examiner's findings of fact except as follows. We reject the portion of Finding of Fact # 3 that states the claimant's start date was postponed until August 1, 2020, as it is inconsistent with the record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

In Issue ID # 0059 7760 46, a review examiner for the DUA determined that the claimant was not monetarily eligible for regular unemployment benefits pursuant to G.L. c. 151A, § 24(a), because his base period wages did not exceed 30 times his weekly benefit amount.

In order to be eligible for regular unemployment benefits, the claimant must have earned sufficient wages in accordance with G.L. c. 151A, § 24, which provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall—

- (a) Have been paid wages in the base period amounting to at least thirty times the weekly benefit rate; provided, however, that for the period beginning on January first, nineteen hundred and ninety-five the individual has been paid wages of at least two thousand dollars during said base period; provided, further, that said amount shall be increased annually proportionately, rounding to the nearest one hundred dollars, to any increases which have occurred during the prior calendar year in the minimum wage. . . .

In order to be monetarily eligible for benefits pursuant to G.L. c. 151A, § 24(a), the claimant must have been paid at least \$5,100.00<sup>2</sup> during his base period and his base period wages must have equaled at least thirty times his weekly benefit rate. Because the claimant did not meet the statutory wage qualifications, he is not monetarily eligible for regular unemployment benefits.

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<sup>2</sup> G.L. c. 151A, § 24(a), states that a claimant must have earned \$2,000.00 in the base period. However, this amount has been changed, as required under the statute, based on changes to the minimum wage. The minimum amount of wages necessary to meet the monetary threshold at the time the claimant filed his unemployment claim was \$5,100.00.

We, therefore, conclude as a matter of law that the review examiner's decision to deny the claimant regular unemployment benefits, as of October 25, 2020, is based on substantial evidence and is free from any error of law affecting substantive rights.

We next consider the claimant's appeal of the decision in Issue ID # N6-FTP3-4N85, which found him eligible for PUA benefits only during the period between April 1, 2020, and August 1, 2020. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant established he was in unemployment for a qualifying COVID-19 reason, but we disagree with his legal conclusion that he was only entitled to benefits through the period ending August 1, 2020.

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>3</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. An eligible COVID-19 listed reason under the CARES Act is § 2102(a)(3)(A)(ii)(I)(gg), which states that individuals will be eligible for PUA benefits if they were "scheduled to commence employment and d[id] not have a job or [were] unable to reach the job as a direct result of the COVID-19 public health emergency" (emphasis added).

While the claimant was initially scheduled to begin employment with the United States [Organization A] on April 1, 2020, his start date was delayed due to the COVID-19 pandemic. *See* Finding of Fact # 3.<sup>4</sup> As the COVID-19 public health emergency prevented the claimant from starting his position with the [Organization A] beginning April 1, 2020, we conclude that he has met his burden to show that he was in unemployment within the meaning of the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg), as of that date.

However, we note that the review examiner ended the claimant's eligibility for PUA benefits on August 1, 2020. The claimant's first paystub, which was admitted into evidence as Exhibit 9, shows that the claimant did not begin working at his position with the [Organization A] until August 9, 2020.<sup>5</sup> As such, we conclude that the COVID-19 public health emergency prevented the claimant from beginning his employment with the [Organization A] until August 9, 2020, and, therefore, he was in unemployment within the meaning of the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg), through August 8, 2020.

The claimant's job was subsequently suspended on October 15, 2020, as a result of a decision issued by the United States Supreme Court. Finding of Fact # 5. Because the claimant's work was suspended for reasons unrelated to COVID-19 on October 15, 2020, he did not meet the eligibility criteria for PUA benefits as of that date.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he was unable to commence employment as a direct result of the COVID-19 public health emergency

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<sup>3</sup> Pub. L. 116-132 (Mar. 27, 2020), § 2102.

<sup>4</sup> We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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> Exhibit 9 is also part of the unchallenged evidence introduced at the hearing and placed in the record.

and was therefore in unemployment within the meaning of the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg), from the period between April 1, 2020, and August 8, 2020.

The review examiner's decision in Issue ID # N6-FTP3-4N85 is affirmed in part and reversed in part. The claimant is entitled to receive PUA benefits for the week beginning March 29, 2020, through August 8, 2020, if otherwise eligible. The claimant is not entitled to PUA benefits as of the week beginning August 9, 2020.

The review examiner's decision in Issue ID # 0059 7760 46 is affirmed. The claimant is not monetarily eligible for regular unemployment benefits.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 14, 2022**



Charlene A. Stawicki, Esq.  
Member



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.

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.

LSW/rh