

The claimant was self-employed making jewelry for sale at crafts fairs and other events in Massachusetts. He demonstrated that, because of the COVID-19 public health emergency, he had to suspend those activities because all of these events were cancelled. Board held that he was out of work for a listed COVID-19 reason under CARES Act § 2102(a)(3)(A)(ii)(I)(kk).

**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-FTP5-KF4P

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 22, 2020, which was denied in a determination issued on January 11, 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 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 evidence pertaining to 2020 craft fair reservations submitted with his Board appeal. Thereafter, the review examiner issued her 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 establish that he was scheduled to sell jewelry at crafts fairs and that those events were cancelled by 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 March 22, 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 owns and operates a jewelry business. He designs and fashions the jewelry pieces and sells them at craft fairs and other similar events.
3. The craft fair season typically begins in March and ends in December.
4. In 2019, the claimant's jewelry business made \$7,047 in gross earnings.
5. In 2020, the claimant's jewelry business suffered a loss of \$2,317.00.
6. The claimant was scheduled to attend eleven craft fairs and other similar events in 2020.
7. The claimant's business lost money in 2020 because all eleven craft fairs and other similar events he was scheduled to attend were cancelled in response to the COVID-19 pandemic.
8. The claimant was scheduled to attend the [Craft Fair A] on March 28, 2020. The event was cancelled in response to the COVID-19 pandemic and the claimant was informed about the cancellation through an email. The event was rescheduled for 2021.
9. The claimant was scheduled to attend the [Craft Fair B] in [Town A], MA on May 2, 2020. The claimant paid an entrance fee of \$65.00 with a check (Check # 835). The event was cancelled in response to the COVID-19 pandemic.
10. The claimant was scheduled to attend the [Craft Fair C] on June 27, 2020. The claimant paid an entrance fee of \$45.00 with a check (Check # 1028). The event was cancelled in response to the COVID-19 pandemic and the claimant was informed about the cancellation through an email.
11. The claimant was scheduled to attend a [Festival A] in [Town B], MA on June 28, 2020.
12. The claimant was scheduled to attend the [Craft Fair D] on July 11, 2020. The claimant paid an entrance fee of \$60.00 with a check (Check # 830). The event was cancelled in response to the COVID-19 pandemic.
13. The claimant was scheduled to attend an [Festival B] at the [Town A] Public Library on August 9, 2020. The claimant paid an entrance fee of \$115.00 with a check (Check # 1008). The event was cancelled in response to the COVID-19 pandemic and the claimant was informed of the cancellation through a letter. The event was rescheduled for 2021.

14. The claimant was scheduled to attend [Festival C] in [Town C], MA on September 12, 2020. The claimant paid an entrance fee of \$100.00 with a check (Check # 833). The event was cancelled in response to the COVID-19 pandemic and the claimant was informed about the cancelation through an email. The event was rescheduled for 2021.
15. The claimant was scheduled to attend the [Craft Fair E] in [Town D], MA on November 21 and 22, 2020. The event was cancelled in response to the COVID-19 pandemic and the claimant was informed about the cancellation through an email. The event was rescheduled for 2021.
16. None of the claimant's checks for the entrance fees to all events in 2020 were cashed because the events were all cancelled in response to the COVID-19 pandemic.
17. On January 11, 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.
18. On June 13, 2021, the claimant attended the [Craft Fair F] in [Town A], MA.
19. On August 15, 2021, the claimant attended the [Craft Fair G] in [Town A], MA.
20. The claimant attended [Festival C] on September 18, 2021 in [Town C], MA. The claimant paid an entrance fee of \$25.00 with a check (Check # 1109).
21. On September 19, 2021, the claimant attended the [Craft Fair F] in [Town A], MA.
22. On October 3, 2021, the claimant attended the [Festival D], in [Town B], MA.
23. The claimant is scheduled to attend the [Craft Fair A] in [Town A], MA on November 6, 2021.
24. The claimant is scheduled to attend the [Craft Fair E] in [Town D], MA on November 20 and 21, 2021.
25. The claimant is scheduled to attend the [Craft Fair H] in [Town A], MA on December 3 and 4, 2021.
26. The claimant is scheduled to attend the [Craft Fair F] in [Town A], MA on December 18, 2021.

Credibility Assessment:

The claimant attended the first telephone hearing on April 16, 2021, and the remand hearing on October 20, 2021. During both hearings, the claimant produced a witness to testify on his behalf.

During the first hearing, the claimant offered for the record his 2019 Federal Tax Returns, including a Schedule C. The claimant provided no other documentation showing earnings in 2020 or cancelled shows in 2020.

During the remand hearing, the claimant provided his 2020 Federal Tax Returns, including a Schedule C, showing that the claimant's business suffered a loss of \$2,317.00 in 2020. In addition, during the remand hearing, the claimant provided credible testimony and documentary evidence that he was scheduled to attend at least eight craft fairs and similar events in 2020, and had paid the entrance fees for the events, but that the events were all cancelled in response to the COVID-19 pandemic. The claimant provided images of checks numbered 830, 833, 835, 1008, and 1028 showing that he had paid entrance fees. Although the claimant did not provide documentary evidence that any of the checks were cashed by the recipients, he credibly testified that the checks were returned to him when the events were cancelled. In addition, the claimant demonstrated that five of the 2020 events were rescheduled for 2021, that he attended the rescheduled events in 2021, and that he attended other events in 2021.

The claimant's testimony is credible.

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 does not meet the PUA eligibility requirements.

The claimant in this case seeks PUA benefits, a temporary 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 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). Pursuant to § 2102(a)(3)(A)(ii)(I)(kk), one of those listed reasons is the person was “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

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

performing his or her customary work activities, and has thereby forced the individual to suspend such activities.”²

The consolidated findings provide that the claimant owns and operates a jewelry business in Massachusetts. He sells his jewelry at craft fairs and similar events throughout Massachusetts. *See Consolidated Findings ## 2–3.* The claimant lost significant income in 2020 due to the COVID-19 public health emergency, as shown in his tax returns and Schedule C. *See Consolidated Findings ## 4–5.* The claimant was scheduled to attend eleven craft fairs and other similar events in 2020 and all were cancelled. *See Consolidated Findings ## 6–7, 8–15.* These additional findings show that the claimant had to suspend his customary work activities as a direct result of the COVID-19 public health emergency in mid-2021.

However, the consolidated findings also establish that, at a certain point, he was able to resume his usual work activities. Beginning June 13, 2021, the claimant began attending fairs and other events again to sell his jewelry. *See Consolidated Findings ## 18–22.* He was scheduled to attend various other events in November and December, 2021. *See Consolidated Findings ## 23–26.*

We, therefore, conclude as a matter of law that that the claimant has shown that he was unable to work in Massachusetts for a COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

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 22, 2020, through June 12, 2021, if otherwise eligible. The claimant is not eligible to receive PUA benefits as of the week beginning June 13, 2021.

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)**

² U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(k), p. I-6.

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.

TJG/rh