

The claimant was unemployed due to the reason listed in the CARES Act, § 2102(a)(3)(A)(ii)(I)(jj), as her employers canceled her services as a babysitter and general house aide, and effectively closed as a direct result of the COVID-19 emergency.

Board of Review
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Issue ID: N6-FTT8-T9MP

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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective March 8, 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 March 31, 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 additional evidence pertaining to the claimant's employment status in 2020. The claimant attended the remand hearing. 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 present sufficient evidence to show that she was out of work due to an approved COVID-19 related reason, 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 with an effective date of March 8, 2020.

2. The claimant lives in Massachusetts. The claimant has a Massachusetts driver's license and registration documents to show proof of residency in Massachusetts.
3. On January 11, 2021, the Department of Unemployment Assistance issued the claimant a Notice of Non-Monetary Issue Determination, informing him [sic] that he [sic] was not eligible to receive PUA benefits beginning the week ending February 8, 2020.
4. The claimant has a Cosmetology and Barbering License, issued by the Commonwealth of Massachusetts, with an expiration date of December 30, 2020. The claimant also has a Cosmetology and Barbering License for Aesthetician work, issued by the Commonwealth of Massachusetts, with an expiration date of September 1, 2021.
5. The claimant started a skincare business in December, 2019. The claimant had two appointments in 2019 and did not have any appointments in 2020. The claimant has two emails from transactions performed on December 22 and December 29, 2020 for her skincare business.
6. The claimant was working in Massachusetts in 2019 and 2020 as a babysitter and general house aid[e]. The claimant worked for two clients, both of whom lived in Massachusetts. The claimant started working in March and April, 2019. The claimant has screenshots of her clients' personal information, including their home address.
7. The claimant has several text messages from both clients showing the claimant's start dates in March and April, 2019. The claimant also has screenshots of Venmo payments made to the claimant in February, 2020. The claimant worked in this position until March 3, 2020, after which her services were cancelled due to the mandated government shutdown, which was prompted by the COVID-19 public health emergency.
8. The claimant has the first page of her 2020 Federal Income Tax Return, which shows total earnings of \$11,200. The claimant's earnings on her 2020 taxes do not reflect her 2020 earnings from the babysitting and home aid[e] positions. The claimant does not have her 2020 Schedule C or her 2019 taxes.

Credibility Assessment:

The claimant's testimony regarding her 2020 work as a babysitter and general house aid[e] is deemed credible. The claimant provided credible documentation showing that she worked in Massachusetts at the time she was affected by COVID-19. Though she did not provide the documents the Board of Review had asked for, she provided sufficient documentary evidence to corroborate her testimony as to her 2020 work as a babysitter and home aid[e]. The claimant also provided

documentary evidence for her skincare business and credibly testified that she did not perform services in her business in 2020.

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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant did not show she was unemployed as a result of a listed COVID-19 related reason.

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.¹ In order to qualify for PUA benefits, the claimant must show that she is a covered individual within the meaning of the CARES Act. To be considered a covered individual, the claimant must self-certify that she is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). Under § 2102(a)(3)(A)(ii)(I)(jj), an individual will be eligible for PUA benefits if her “place of employment is closed as a direct result of the COVID-19 public health emergency.”

The consolidated findings provide that the claimant worked as a babysitter and general house aide for two Massachusetts families in 2020. The claimant was unable to continue this work as of March 3, 2020, because the restrictions in place as a result of the COVID-19 public health emergency prompted her employers to restrict entry into their homes, canceling the claimant's services. Effectively, the claimant's place of employment was closed as a direct result of the COVID-19 public health emergency. Thus, the claimant has shown that she was unemployed in 2020 for a listed COVID-19 related reason.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was out of work in Massachusetts for one of the eligibility reasons listed in the CARES Act at § 2102(a)(3)(A)(ii)(I)(jj).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits as of the week beginning March 8, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 1, 2021



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

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.

SVL/rh