

Claimant's testimony in combination with a letter from his physician established that he had to stop working in March, 2020, because his chronic health conditions put him at heightened risk of complications were he to be infected with COVID-19. He is eligible for PUA benefits pursuant to CARES Act, § 2102(a)(3)(A)(ii)(I)(ff).

**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-FTTM-PRH8

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 29, 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 20, 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 afford the claimant an opportunity to present additional evidence about his work and reason for leaving in March, 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 original decision, which concluded that the claimant did not sustain his burden to show that he was unemployed for a reason listed under the CARES Act because he could not document that he had been employed at the time and had to stop working due to COVID-19, 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 29, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267.00 per week on the claim.
2. The claimant lives in Massachusetts.
3. In March 2020, the claimant had chronic health conditions of blood clots and asthma.
4. The claimant has a letter from his doctor documenting the times that he was diagnosed with and treated for blood clots in the lungs and asthma exacerbations from 2017 to the present.
5. In March 2020, the claimant worked for nine or ten days as a bartender and custodian at a strip club in [City], Massachusetts.
6. In March 2020, the claimant's doctors advised him to step away from his job at the strip club because the public nature of the work in combination with his chronic blood clots and asthma put him at greater-than-average health risk if he were to become infected by COVID-19. One doctor told the claimant that the crowded strip club was the worst possible environment for him.
7. After receiving his doctor's advice, the claimant quit his job at the strip club.
8. The claimant does not have any documentation showing that he worked or earned income in Massachusetts in 2020.
9. When the claimant asked to be paid, the strip club owner or manager told him that because he had not worked for a full two weeks, he had not worked there long enough to be paid. When the claimant questioned the owner or manager about this, he was told that that was the way the club did business.
10. 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.
11. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant provided detailed and consistent testimony that he has chronic health conditions of blood clots and asthma. The claimant provided a letter from his doctor regarding the history of his treatment for these conditions since 2017. The claimant provided details and consistent testimony that he worked for nine or ten days at a strip club in March 2020, was advised not to work there by his doctors because of his greater-than-average risk if he contracted COVID-19, and quit his job based on this medical advice. The claimant provided further detailed and

consistent testimony that when he asked to be paid, he was told that because he had not worked for a full two weeks, he had not worked long enough to be paid. The claimant's testimony is credible because it was consistent and detailed, and supported by the documentation provided.

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. Based upon these consolidated findings, we disagree with the review examiner's legal conclusion that the claimant is ineligible for PUA benefits.

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 he is a covered individual within the meaning of the CARES Act. Among the requirements to be considered a covered individual is that the claimant self-certify that he is unemployed for a reason listed under the CARES Act, § 2102(a)(3)(A)(ii)(I)(aa) – (kk).

Subsection 2102(a)(3)(A)(ii)(I)(ff) lists as a reason: "the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19." The Secretary of Labor has interpreted this to include: "[a]n individual whose immune system is compromised by virtue of a serious health condition and is advised by a health care provider to self-quarantine in order to avoid the greater-than-average health risks that the individual might face if he or she were to become infected by COVID-19."²

Although the claimant asserted at the original hearing that he had to stop working his new job at a strip club in March, 2020, due to health conditions, he did not produce documentation from a health care provider corroborating these conditions or that he was advised to stop working for medical reasons. After remand, the record now includes a letter from his physician confirming the claimant's long-term, chronic medical conditions of blood clots and asthma. *See Consolidated Finding # 4.* Additionally, the consolidated findings now provide that in March, 2020, the claimant had these medical conditions, was working at a Massachusetts strip club, and was advised by his physician to quit that job in order to avoid the greater-than-average risk to his health if he were to become infected with COVID-19. *See Consolidated Findings ## 3, 5, and 6.*

To be sure, the claimant's proof would have been stronger if he had been able to present some sort of paystub or other document corroborating that he had been employed by the strip club in March, 2020. He was unable to do so, however, because the owner refused to pay him. *See Consolidated Finding # 9.* This means that such evidence was not available. "If the proponent has presented

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

² U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), Attachment I, p. I-2.

the best available evidence, which is logically adequate, and is neither contradicted nor improbable, it must be considered.” New Boston Garden Corp. v. Board of Assessors of Boston, 383 Mass. 456, 471 (1981), *quoting* L.L. Jaffe, Judicial Control of Administrative Action 598, 608 (1965). Under these circumstances, his testimony about the reason for being unable to work after March, 2020, was the best available evidence. Moreover, it was accepted by the review examiner as credible because the claimant’s testimony had been detailed and consistent throughout both hearings. We believe her assessment is reasonable in relation to the evidence presented. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996).

We, therefore, conclude as a matter of law that the claimant had to stop working in March, 2020, for the listed CARES Act reason under § 2102(a)(3)(A)(ii)(I)(ff).

The review examiner’s decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March, 29, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 24, 2022



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.

AB/rh