

**The claimant was a full-time student working part-time for a college in MA, when the college shut down due to COVID-19. She failed to show she would have been employed beyond her graduation date in May, 2020. The claimant was therefore eligible for PUA benefits from time period of her effective date until her graduation date, and ineligible thereafter.**

**Board of Review  
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Member  
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Member**

**Issue ID: N6-FV3J-66VK**

### 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 8, 2020, which was denied in a determination issued on January 13, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's initial determination and awarded PUA benefits in a decision rendered on May 28, 2021, concluding that the claimant was eligible for benefits beginning the week ending March 14, 2020, until week ending August 22, 2020. She denied benefits thereafter, because she concluded 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. We accepted the claimant's application for review.

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 has carried her burden to show that she was working in Massachusetts when she was unable to continue her job because of COVID-19, 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 March 8, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. Prior to filing her PUA claim, the claimant worked as a front desk associate and tutor for a learning center at a [City A]-based college. The claimant started this

position in September 2016 and had worked there every semester. The claimant worked on a part-time basis, working 20 hours per week, and earned minimum wage. The claimant was a full-time student at the same college.

3. On March 8, 2020, the claimant received a notice from the college informing her that they were closing campus due to the COVID-19 public health emergency. The learning center also closed, and the claimant was unable to continue her position as a result. The claimant graduated in May 2020 but would have continued working in this position throughout the summer of 2020.
4. On August 20, 2020, the claimant moved to [City B], California. The claimant has resided there since then.
5. The claimant would have been working at the learning center but for COVID-19 restrictions. Nothing else prevented her from working.
6. On January 13, 2021, the Department of Unemployment Assistance (“DUA”) issued the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive PUA benefits beginning the week ending February 8, 2020.

### Ruling of the Board

In accordance with our statutory obligation, we review 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 except as follows. We reject the portion of Finding of Fact # 3, where the review examiner states that the claimant would have continued working in this position throughout the summer of 2020, as there was no evidence to support this finding and it is inconsistent with the claimant’s testimony. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we agree with the review examiner’s legal conclusion that the claimant has carried her burden to show that she was working in Massachusetts when she was unable to continue her job because of COVID-19. However, we disagree on the disqualification date.

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>1</sup> In order to qualify for PUA benefits, the claimant must show that she is a covered individual within the meaning of the CARES Act. Pursuant to the provisions of the CARES Act, the U.S. Department of Labor (DOL) has issued guidance about qualifying for PUA benefits. Its Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (Apr. 27, 2020), specifies that full-time students may be eligible for PUA benefits so long as they are unemployed or partially unemployed for a qualifying reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk) of the CARES Act.<sup>2</sup> Among the criteria for eligibility established by the Secretary of Labor in accordance with

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>2</sup> See UIPL 16-20, Change I, Attachment I, D(28), p. I-7.

§ 2102(a)(3)(A)(ii)(I)(jj), is that an individual will be eligible for PUA benefits, if a business is shut down due to an emergency declaration or due to necessary social distancing protocols, the unemployment of individuals who worked in the business would be considered a direct result of COVID-19.”<sup>3</sup>

The claimant was a full-time student living and studying at a college in Massachusetts. Finding of Fact # 2. She worked part-time in the learning center until March 8, 2020, when the college closed its learning center and campus as a result of the COVID-19 pandemic. Finding of Fact # 3. These findings show that the college and learning center closure caused the claimant to stop performing her job in Massachusetts.

However, nothing in the record demonstrates that the claimant’s job with the college would have continued after she graduated in May of 2020. The claimant testified merely that she may have had the option to work beyond her graduation date.<sup>4</sup> This testimony, by itself, is not substantial evidence that she would have continued working. There is no further evidence, such as an offer letter or schedule, to confirm that her summer employment was more than a possibility. As the claimant failed to provide any evidence to show that she would have worked beyond her graduation date, she was no longer unemployed for a qualifying COVID-19 reason after May of 2020.

We, therefore, we conclude as a matter of law that the claimant met her burden to show that she was working in Massachusetts when she became unemployed for a qualifying COVID-19 reason listed in § 2102(a)(3)(A)(ii)(I)(jj) 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 beginning week ending March 14, 2020, through May 30, 2020, if otherwise eligible. The claimant is ineligible for PUA benefits beginning week ending June 6, 2020, and for subsequent weeks thereafter.

**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**

<sup>3</sup> See UIPL 16-20 (Apr. 5, 2020), Attachment I, C(1)(j), p. I-6.

<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).

**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.

DY/rh