

**The claimant was self-employed as a contractor in MA until his business slowed down in 2020. Clients canceled contracts because they didn't want other people in and around their homes due to increased risk of exposure to COVID-19, and the pandemic disrupted the construction material supply chain. Because the pandemic severely limited the claimant's ability to perform his work, he is eligible for PUA benefits.**

**Board of Review  
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Chairman  
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Member  
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**Issue ID: N6-FV4D-J2HN**

### 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 December 6, 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 affirmed the agency's initial determination and denied PUA benefits in a decision rendered on May 28, 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 obtain additional information about the claimant's self-employment in 2020. The claimant attended the remand hearing. Thereafter, the review examiner issued his 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 meet his burden to show that he was working in Massachusetts in 2020 when his work was impacted by 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 December 6, 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 has had business certificates for his home renovation business issued by the Town of [Town A] since 2011. His current certificate will expire April 5, 2025. He has an up-to-date Construction Supervisor License issued by the Commonwealth of Massachusetts that will expire on October 17, 2021. He last completed continuing education to maintain that license in August 2019. His next continuing education is due in August 2021.
3. The claimant is registered with the Commonwealth's Office of Consumer Affairs and Business Regulation as an Individual Home Improvement Contractor, which registration will expire on June 17, 2022. In 2020, the claimant had commercial liability insurance that was in force until January 29, 2021.
4. In 2019 and early 2020, the claimant was self-employed doing home improvement and light construction in Massachusetts. One project involved the construction of a patio at a residence in [Town B], Massachusetts. The claimant purchased construction materials for that project from two vendors in Massachusetts. The claimant began the patio project on or about March 2, 2020 and completed it on or about March 19, 2020.
5. With the onset of the COVID-19 pandemic in late February 2020 and after the completion of the patio project, several of the claimant's scheduled projects were cancelled. The claimant found that would-be customers generally did not want people in and around their homes. Manufacturers and suppliers of construction materials halted operations and deliveries of materials were disrupted. The claimant's renovation business was significantly reduced as a result, and the dearth of work continued through the entirety of 2020.
6. On January 13, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits as of the week ending February 8, 2020.
7. The claimant appealed the DUA's determination.

#### Credibility Assessment:

The claimant presented an undated, unsigned work proposal. He credibly testified that the order was for the patio project in March 2020, and that such work orders and photocopies of receipts are typical of his business recordkeeping. His testimony that the receipts he presented all related to the patio project was also credible. As to Question #4 in the Board of Review's remand order, the claimant presented no further documentation of work which was affected by the COVID-19 pandemic. However, given the evidence in the record about his March work, the business

certificate history, and his valid construction license and registration, his testimony about the work slowdown in 2020 is deemed credible. The claimant, who had an active construction business, suffered a slow-down due to the COVID-19 pandemic, and that began near the time of the patio project, and continued through the remainder of 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. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to establish his eligibility 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.<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. Among the criteria for eligibility established by the Secretary of Labor, in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is that an individual will be eligible for PUA benefits if they were "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 performing his or her customary work activities, and has thereby forced the individual to suspend such activities." Further, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.<sup>2</sup> Therefore, in order to be eligible for benefits, the claimant must show that he had work in Massachusetts that was negatively impacted by the COVID-19 pandemic.

During both hearings, the claimant testified that he experienced a substantial slow-down in work due to the COVID-19 pandemic. The review examiner accepted this testimony as credible based on evidence showing the claimant was a licensed contractor in the Commonwealth of Massachusetts, had been operating his business in Massachusetts since 2011, and had work orders and invoices showing he completed a project at a residence in Massachusetts in early March 2020. *See Consolidated Findings ## 2-4.* Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Upon review of the record, we see no reason to disturb the review examiner's credibility assessment.

The claimant was self-employed as a contractor focusing on home renovation projects in Massachusetts. Consolidated Findings ## 2-4. Starting in late February, 2020, many of the

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

<sup>2</sup> *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL)16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

claimant's clients began cancelling their projects because they were uncomfortable having people in and around their homes due to the COVID-19 pandemic. Consolidated Finding # 5. Additionally, the pandemic disrupted the construction material supply chain, further impacting the claimant's ability to work. Id.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that the COVID-19 public health emergency severely limited his ability to perform his customary work activities and he was therefore in unemployment within the meaning of the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning December 6, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 29, 2021**



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](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