

The claimant was a health aide who could not work due to COVID-19 restrictions that prevented her from visiting her client in a nursing facility. She established that she was unable to work for the reason listed under the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk), and is eligible for PUA benefits.

**Board of Review
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Chairman
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Member
Michael J. Albano
Member**

Issue ID: N6-FV68-DJ93

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 15, 2020, which was denied in a determination issued on January 4, 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 April 27, 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 consider additional evidence and to address evidentiary inconsistencies in the record. Specifically, we asked the review examiner to address whether the claimant lost work due to the COVID-19 public health emergency for the week ending January 2, 2021. 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 was not eligible for PUA benefits for the week ending January 2, 2021, 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 are set forth below in their entirety:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) which was determined to be effective March 15, 2020.

2. The claimant filed her claim for PUA using a Massachusetts address.
3. The claimant worked in [Town A], Massachusetts in 2019 and 2020 as a private home care aid for one client (client), who is elderly and has dementia.
4. The claimant filed taxes in 2019 and 2020 related to her work for the client.
5. The client paid the claimant with personal checks.
6. The claimant went to the client's home 2-3 times a week to provide services.
7. The client's family moved the client to a nursing facility due to the client's declining condition.
8. The claimant continued working for the client while she was in the nursing facility.
9. The claimant stopped working for the client in the nursing facility after the pandemic began in 2020 due to the nursing facility restricting visitors because of concerns over the spread of COVID-19 in the facility.
10. The claimant could not go into the nursing facility to work for the client due to the COVID-19 restrictions.
11. The claimant did not work during the week ending January 2, 2021.
12. The claimant did not work during the week ending January 2, 2021 because she could not go into the nursing facility to work for the client and the claimant found it difficult to find other clients to work for, given their concerns over the COVID-19 pandemic.
13. The claimant filled out her weekly claim survey for the week ending January 2, 2021 selecting that she was not impacted by the COVID-19 emergency.
14. The claimant intended to make the selection that she was impacted by COVID-19 during the week ending January 2, 2021, but the claimant's computer changed the claimant's response for that week and the claimant was unable to change the response once it was changed by the computer.
15. The claimant was initially using a 2008 computer to fill out her weekly claim surveys for PUA.
16. The claimant had many issues with her computer when filing weekly claims due to the age of her computer.

17. The claimant contacted the computer company about her issues, but they were unable to help her with the issues, citing the computer's advanced age.
18. When filing weekly claims for PUA, on multiple occasions, the claimant's computer changed the claimant's responses to answers in the weekly questionnaire and would not allow the claimant to change responses that had changed to an incorrect response after it was entered.
19. The claimant was issued a Notice of Non-Monetary Issue Determination dated January 4, 2021, informing the claimant she was not eligible for PUA benefits for the week ending January 2, 2021.
20. The claimant filed a timely appeal related to this Notice of Non-Monetary Issue Determination dated January 4, 2021.
21. At the time of the remand hearing, August 19, 2021, the claimant began using her cell phone to assist her with filing her weekly PUA claims in order to avoid the issues with her computer when filling out her weekly claim surveys.

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. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant was not eligible for PUA benefits for the week ending January 2, 2021.

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. Among the requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that she is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa) – (kk). One of the listed reasons under subsection (kk) is self-employed individuals who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency. *See* U.S. Department Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), Attachment I, (kk)(1), pp. I-3 – I-4.

In this case, the claimant worked in Massachusetts in 2019 and 2020 as a private home care aid. *See* Consolidated Finding # 3. The claimant did not work during the week ending January 2, 2021, because she could not go into the nursing facility to work for her usual client due to COVID-19 restrictions, and the claimant found it difficult to find other clients to work for, given the facility's concerns over the COVID-19 pandemic. *See* Consolidated Findings ## 10 – 12. These findings

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

established that the claimant was unable to perform her customary work because of the COVID-19 public health emergency for the week ending January 2, 2021.

We, therefore, conclude as a matter of law that that the claimant has shown that she was unable to work in Massachusetts for the reason listed under 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 27, 2020, through January 2, 2021, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 3, 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

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