

**Claimant was a seasonal employee who typically worked in operations logistics from January until early May. He filed his PUA claim in January 2021. He was not eligible for PUA benefits, because the Continued Assistance Act prevents him from back dating his PUA claim before December 6, 2020, and there is no evidence that he was hired for the 2021 season, which was canceled due to COVID-19.**

**Board of Review  
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**Issue ID: N6-FV85-62HD**

### 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 affirm.

The claimant filed a claim for PUA benefits with the DUA on January 7, 2021, with an effective date of December 6, 2020, which was denied in a determination issued on January 19, 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 afford the claimant an opportunity to submit additional evidence to show that he had been working in Massachusetts in 2020, and that his work was affected by COVID-19. 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 failed to provide sufficient evidence to show that he was scheduled to perform operations logistics services in Massachusetts in 2020, and that this work was negatively affected 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 filed the PUA claim using a Massachusetts address.
3. The claimant worked for an entertainment company several weekends a year on a seasonal basis in both 2018 and 2019.
4. The claimant's job for the company was to perform operations logistics to help with the setup and dismantling of the company's shows.
5. The event season typically ran from early January until late April or early May, *i.e.* approximately four months.
6. The events were held across the country.
7. The claimant typically flew to an event on a Friday, worked upon arrival, and then continued to work most of the weekend, upwards of sixteen-hour days, before returning on the Monday following the weekend.
8. The tour the claimant worked had ten shows scheduled for the 2020 season, as follows, and the claimant was scheduled to work all of them: January 11, 2020; January 19, 2020; January 26, 2020; February 8, 2020; February 15, 2020; February 23, 2020; April 5, 2020; April 19, 2020; April 26, 2020; and May 3, 2020.
9. The claimant received his 2020 schedule online through the company's website.
10. The claimant worked the first six of the ten shows of the 2020 season and intended to work the entire season.
11. The last show of the tour the claimant worked was on February 23, 2020.
12. The claimant did not work any of the remaining shows of the 2020 season because, on March 20, 2020, the entertainment company cancelled the remainder of its 2020 season, and it ultimately cancelled its 2021 season as well, all because of COVID-19 restrictions that had been imposed on the company.
13. The 2020 event schedule included an event planned for Massachusetts on April 19, 2020.
14. For each of the six shows the claimant worked in the 2020 season, he was paid \$700 for the entire weekend of work.
15. From each payment the claimant received from the company in 2020, a portion of his wages was withheld to cover the claimant's Massachusetts income taxes.

16. The claimant's net earnings from the company were deposited directly into his bank account, and he received six direct deposits from the company, of \$545.62 (in one case) or \$552.62 (in the other five cases), between January 1, 2020 and February 28, 2020.
17. The claimant had wages from the company of \$5,750 and \$4,200 in 2019 and 2020, respectively.
18. The only other work the claimant performed in 2020 and 2021 was working on his family horse farm in Massachusetts in exchange for housing, which, by agreement, was valued at \$500 per month.
19. On January 19, 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.
20. The claimant appealed the DUA's determination.

#### Credibility Assessment:

The claimant testified that he worked for an entertainment company on a seasonal basis in 2018, 2019, and 2020; that he performed operations logistics to help the company set up and dismantle shows; that the season typically ran from early January to late April or early May of each year; that he worked only six shows in 2020; that his last show was on February 23, 2020; that he was slated to work a show in Massachusetts later in the 2020 season; that he did not work at all in 2021; that the COVID-19 public health emergency prevented him from working after the February 23, 2020 show by causing the cancellation of the tour for the rest of the 2020 season and all of the 2021 season. A 2019 W-2 from the entertainment company reports that the claimant had wages of \$5,750 in 2019. The claimant's 2020 W-2 from the company reports wages of \$4,200 in 2020. A 2020 Payment Detail Listing reports that the entertainment company paid the claimant six times in 2020 at the rate of \$700 each time. The claimant's bank activity report shows six direct deposits received from the entertainment company between January 1, 2020 and February 28, 2020 of either \$545.62 or \$552.62. A letter from the company's director of human resources states that the 2020 season was cancelled as of March 20, 2020 and that the entire 2021 season was cancelled as well, due to COVID-19 restrictions.

The 2020 events schedule lists ten events for the 2020 season. The claimant had checked off the first six events to indicate that he had worked those six shows. The next event on the events schedule was dated April 5, 2020. The Payment Detail Listing, showing six payments, the last of which was dated February 28, 2020, is consistent with the claimant's testimony that the last show he worked was on February 23, 2020 and that the events were cancelled before his April 3, 2020 show.

The events schedule lists one show scheduled in Massachusetts for April 19, 2020. The claimant's 2020 W-2 shows a withholding to cover Massachusetts state income taxes. The 2020 Payment Detail Listing also shows the withholding of wages to cover the claimant's Massachusetts state income tax obligation. It is evident that the claimant had worked or was scheduled to work in Massachusetts in 2020.

The claimant was asked to produce his state and federal tax returns for 2019 and 2020. The claimant testified that he had no tax returns and that his only tax documents were the W-2s. Even in the absence of tax returns, the claimant's W-2s from 2019 and 2020 and other supporting documentation adequately support that the claimant worked for the entertainment company and was working at the time the company announced the cancellation of the 2020 season.

### 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. After 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 agree with the review examiner's legal conclusion that the claimant has not met his burden of showing that he is eligible 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. In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act.<sup>1</sup> Individuals may be eligible for PUA benefits as long as they are unemployed or partially unemployed for a qualifying reason listed under § 2102(a)(3)(A)(ii)(I)(aa)-(kk). Among the criteria for eligibility is § 2102(a)(3)(A)(ii)(I)(gg), which states that an individual will be eligible for PUA benefits "if the individual, was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency."

In this case, the claimant asserts that he was scheduled to work in Massachusetts and that he was unable to reach his work as a result of the pandemic. During the initial hearing, the claimant testified that he was residing in Massachusetts and that he worked as an operations crew member (in logistics) for an entertainment company and was scheduled to work in Massachusetts. However, because he failed to submit documentary evidence to support his testimony, the review examiner concluded that the record lacked substantial evidence to show that he was eligible to file a PUA claim in Massachusetts. We remanded the case for the review examiner to consider additional documentary evidence showing the claimant's work in Massachusetts in 2020.

After remand, the record in this case establishes that the claimant was unable to perform scheduled work in Massachusetts in 2020 due to the COVID-19 public health emergency. This evidence is

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

now captured in the consolidated findings, which provide as follows. The claimant resided in Massachusetts and was working, in operations logistics, for an entertainment company, on a seasonable basis. *See Consolidated Findings ## 2, 3, 4.* The season would normally run from January until late April or beginning of May and the claimant would perform his duties at events across the country. *See Consolidated Findings ## 5 and 6.* The tour had ten shows scheduled for 2020 and the claimant's last show worked was on February 23, 2020. *See Consolidated Findings ## 8 and 11.* As a result of the pandemic, starting on March 20, 2020, the entertainment company canceled the remaining 2020 tour dates and the entire 2021 season, including the event scheduled in Massachusetts on April 19, 2020. *See Consolidated Findings ## 12 and 13.*

However, the claimant did not file his claim for PUA benefits until after December 27, 2020, and therefore, cannot back date his claim for PUA benefits to week ending February 8, 2020. The Continued Assistance Act states that PUA claims filed after December 27, 2020, may be back dated no earlier than December 1, 2020, with an effective date of December 6, 2020.<sup>2</sup> Because the claimant did not file his initial claim for PUA benefits until January 7, 2021, the earliest effective date is December 6, 2020. *See Consolidated Finding # 1.* As the claimant was a seasonal employee, whose season ended in April of 2020, his work was not affected by COVID-19 in December, 2020. *See Consolidated Findings ## 3 and 5.*

With regard to the 2021 season, the claimant has failed to show he was hired by the entertainment company to work in 2021. The letter from the entertainment company states the entire 2021 season was canceled.<sup>3</sup> However, the letter does not state the claimant had been hired for the 2021 season. It only states the claimant was hired on December 30, 2019, for the 2020 season. Lacking any evidence that he had been rehired to work the 2021 season, we cannot conclude that he was scheduled to commence employment and did not have a job as a direct result of the COVID-19 public health emergency in 2021.

We, therefore, conclude as a matter of law that that that the claimant has not shown that he was unable to work in Massachusetts for the reason listed under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg).

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits beginning week ending February 8, 2020, and thereafter.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 8, 2022**

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<sup>2</sup> *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) No.16-20 Change 4 (Jan. 8, 2021), Attachment I, C(15), pp. I-18 - I-19.

<sup>3</sup> Remand Exhibit # 5 is a letter from the entertainment company which hired the claimant in 2020. Although not explicitly incorporated into the review examiner's findings, it is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *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).



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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.

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