

**The claimant established that he had a significant diminution of his usual delivery services because of the COVID-19 public health emergency, when he lost more than a third of his business because clients closed due to the pandemic. He is therefore entitled to PUA benefits.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> 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-H2K9-KMT6**

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. On February 1, 2021, the DUA sent the claimant a determination informing him that he was not eligible to receive PUA benefits. The claimant appealed this to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's initial determination in a decision rendered on August 9, 2021, by allowing benefits from January 1, 2021, through February 6, 2021, and denying benefits thereafter. 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. 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 was only eligible for one month of PUA benefits because he failed to prove that his income had otherwise been "drastically reduced" by 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:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) effective December 6, 2020.

2. Since November 2013, the claimant has been self-employed as an independent contractor doing deliveries in association with a courier company in Massachusetts. The claimant drives a delivery van and pays for his own fuel.
3. Prior to applying for PUA, the claimant had three main delivery contracts. One contract involved delivering egg samples to lab [sic], which earned him \$450 per week. Another contract involved delivering medicine to jails, which earned him \$600 per week. Another contract involved delivering checks to a bank, which earned him \$150 per week.
4. In addition to his main contracts, the claimant's work also allows him to pick up short-term, on-demand contracts, which can vary in pay.
5. Between March 9, 2020, and March 15, 2020, the claimant made a total of \$873.66 from delivery contracts.
6. On March 25, 2020, the claimant lost the contract to deliver egg samples when the company producing the eggs was forced to shut down due to an outbreak of COVID-19.
7. Three weeks after losing the egg delivery contract, the claimant also stopped working the check delivery contract due to concerns about the cost feasibility of driving the route.
8. Between March 25, 2020, and early December 2020, the claimant regularly worked a variety of on-demand contracts, making \$800 to \$1200 per week.
9. On January 7, 2021, the claimant tested positive for COVID-19 and was out of work until February 7, 2021.
10. After recovering from COVID-19, the claimant resumed working his \$600 medicine delivery contract and began receiving more on-demand work.
11. Between May 31, 2021, and June 6, 2021, the claimant made a total of \$648.88 cents [sic] from delivery work.
12. As of June 2021, the claimant makes about \$650 per week from on-demand work alone.

### 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 findings of fact 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 findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we hold that

the review examiner legally erred by applying the incorrect standard of review in concluding that the claimant was only entitled to benefits from January 1, 2021, through February 6, 2021.

The claimant in this case seeks PUA benefits, an unemployment benefit program provided under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and administered by the U.S. Secretary of Labor.<sup>1</sup> 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: “[s]elf-employed individuals (including independent contractors and gig workers) who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency, even absent a suspension of services . . .”<sup>2</sup>

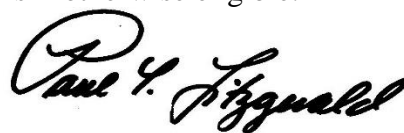
The claimant had three contract clients who provided a fixed total weekly income of \$1,200.00, one of which was the \$450.00 per week egg-sample client. *See* Finding of Fact # 3. Thus, the \$450.00 from the egg-sample-contract client lost due to COVID-19 (*see* Finding of Fact # 6) made up 38% of the weekly earnings which he could count upon with certainty.

The review examiner concluded that the claimant was entitled to weekly benefits for the period from January 1, 2021, to February 6, 2021, due to his contracting COVID-19. *See* Finding of Fact # 9. However, the review examiner declined to award further benefits as a result of a diminution of services caused by the pandemic, based upon applying a “drastically” reduced income standard of review. The review examiner opined that the claimant’s loss of over a third of his base income was not a sufficiently severe (*i.e.*, drastic) diminution to render him eligible for PUA because he continued to have the other two contract clients and the varying income from on-demand sources.

The U.S. Department of Labor merely requires a significant diminution of work. The review examiner’s requirement of a drastic income loss is a level of severity that goes well beyond this. In this case, we believe that a 38% decline in earnings reflects a significant diminution of the claimant’s usual delivery services because of the COVID-19 public health emergency.

We, therefore, conclude as a matter of law that the claimant provided substantial and credible evidence that he lost work for a listed COVID-19 reason pursuant to the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

The review examiner’s decision is reversed. The claimant is eligible for PUA benefits as of the week beginning December 6, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 21, 2022**

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

<sup>2</sup> U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1)(kk), p. I-8.



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.

BGM/rh