

Due to filing her application for PUA benefits after December 27, 2020, the claimant is time barred from back dating her claim before December 6, 2020. The claimant, a certified nursing assistant, was a working full-time at patient homes and facilities in MA, when her children had to participate in remote learning due to COVID-19. Therefore, the claimant failed to show she was unable to work due to the pandemic and ineligible for PUA benefits.

**Board of Review
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Issue ID: N6-H344-VM59

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, effective December 20, 2020, which was denied in a determination issued on February 11, 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 August 20, 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 afford the claimant an opportunity to submit additional evidence to show that she had been working in Massachusetts in 2020, and that her 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 substantial evidence to show that she worked in Massachusetts in 2020 as a certified nursing assistant and that her 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 20, 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 began working for employer [A] in 2019. The claimant worked as a Certified Nursing Assistant on a full-time basis and performed her duties at patient homes and at facilities in Massachusetts located in the towns of [Location A], [Location B], and [Location C].
3. The claimant's work schedule with employer [A] varied somewhat through the course of her employment with work scheduled Monday through Thursday, and Saturday for approximately 40 hours per week. If the claimant had something going on with her children, she would adjust her schedule, and if there was a family emergency or she needed to be home with her children during remote learning, the claimant sometimes excused herself from work.
4. The claimant did not receive overtime pay from employer [A], but if she worked weekend hours, her rate of pay was increased from the regular salary level of \$17 per hour to a rate of \$19 per hour with the difference added to her bi-weekly pay as an adjustment.
5. The claimant certified in her PUA application that she was diagnosed with Coronavirus Disease 2019 (COVID-19) or was experiencing symptoms of COVID-19; that a member of her household has been diagnosed with COVID-19; that she was providing care for a family or household member who was diagnosed with COVID-19; and, that a child or other person she cares for is unable to attend school or another facility as a result of COVID-19 and such school or facility care is required for me to work.
6. The claimant was tested for COVID-19 on December 28, 2020 and the test result on December 31, 2020 was positive. The claimant was tested for COVID-19 on May 28, 2021 and the test result was negative. The claimant's husband was tested for COVID-19 on January 2, 2021 and the test result was positive.
7. The claimant has four school aged children. The claimant's youngest child attended kindergarten remotely for the 2020-2021 academic year. The claimant's two middle children participated in remote learning since March 12, 2020. The claimant's eldest child was enrolled as a grade 8 student and was remote learning during the period from March to June 2020 of the 2019–2020 school year.
8. The claimant received 2019 Form W-2 wage and tax statements from employer [A] and employer [B], reporting gross wages of \$629.15 and \$21,808.34, respectively.

9. The claimant filed a 2019 Form 1040 individual tax return and a 2019 Massachusetts individual tax return Form 1 reporting gross income of \$22,437. The claimant's 2019 tax filing lists two of her four children as dependents.
10. In 2020, the claimant's taxes were filed jointly with her husband, listing all four of the claimant's children as dependents. The claimant filed a 2020 Form 1040 tax return and a 2020 Massachusetts Form 1 tax return. On the 2020 Schedule INC in the Massachusetts state tax filing, the claimant listed 2020 Form W-2 income from three separate employers: employer [A], employer [C], and employer [D], totaling \$24,414.
11. In addition to her 2020 employment with employer [A], the claimant was employed by employer [C] on a fulltime basis as a Form W-2 employee. The claimant's income from employer [C] comprised \$17,381, the bulk of her earnings in 2020. The claimant worked as a Certified Nursing Assistant for employer [C]. This work was located in Massachusetts.
12. The claimant separated from her employment with employer [A] in April 2020 and did not return to work for this employer. The claimant did not take a leave of absence from her employment with employer [A].
13. The claimant did not have work in Massachusetts in 2020 that was affected by COVID-19.
14. The claimant filed a claim for regular unemployment insurance (UI) benefits through the Massachusetts DUA with an effective date of January 24, 2021. The DUA determined the claimant to be ineligible for UI benefits and no benefits have been paid on this claim to date.
15. The claimant has certified for PUA benefits for the weeks ending January 2, 2021 through September 4, 2021, with the exception of the weeks ending January 9, 2021 and January 23, 2021. No benefits have been paid on the claimant's PUA claim.
16. The claimant continued to work for employer [C] in 2021 and had quarterly reported earnings of \$1,436.50, \$1,681.63, \$3,844.14, and \$2,882.25 in Q1 through Q4, respectively.
17. The claimant began a new job with employer [E] in Q4 2021 and earned \$7,826.64 for the quarter.
18. On February 11, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive benefits beginning the week ending February 8, 2020.
19. The claimant appealed the DUA's determination.

Credibility Assessment:

In response to the [Board of Review's] request for federal and state tax filings, the claimant provided her 2019 federal and Massachusetts state tax returns which she filed individually listing two of her four children as dependents. The claimant also provided her 2020 federal and Massachusetts state tax returns which she filed jointly with her husband listing their four dependent children.

In 2019, the claimant worked as a Form W-2 employee and reported income from two employers totaling \$22,437. The claimant's testimony about her employment was inconsistent and the claimant had difficulty remembering dates of employment. The claimant referred to employer [B] as 2020 employment, but wage information established that this employment ended in 2019. In addition, the claimant could not remember when her employment at employer [A] began in 2019. The claimant was inconsistent in her testimony regarding her dates of employment and could not recall working for employer [C] in 2020, even though this employer comprised the bulk of her 2020 earnings. The claimant's inconsistencies in her testimony concerning her employers and dates of employment negatively impacts her credibility.

The claimant's 2020 [sic] reported gross wages from three employers: employer WJM, employer [A], and employer [D].

The claimant did not provide paystubs requested for all employers including employer [A] during the period of November 29, 2020, through January 2, 2021, as requested by the [Board of Review]. The claimant maintained that she contacted employer [A] for paystubs and was told that the record is no longer available after three months from her separation date and must be requested from headquarters. DUA wage records establish that the claimant was working for employer [C] during Q4 2020 and Q1 2021. The claimant had ample notice of the [Board of Review's] request for this information and did not provide it. The claimant did not provide any and all contemporaneous correspondence, emails, letters, and documents regarding the claimant's request for a leave of absence from employer [A]. The claimant asserted at one point that she did not have a leave of absence from any of her employers and asserted at another point that she spoke with her supervisor at employer [A] in April 2020 to attend to her children during remote learning and was told to take whatever time she needed and come back when she was ready. The claimant did not return to work for employer [A] and the income information available through the DUA and the claimant's tax filing shows that she began working for employer [C] in Q1 2020 and continued in Q3 and Q4 of 2020 earning Massachusetts based wages of \$17,381. The claimant did not recall this employment with employer [C] at the remand hearing despite being reminded of the income earned. The fact that the claimant worked for employer [C] in this position during the COVID-19 pandemic contradicts her testimony that she left work to attend to her children during remote learning and that remote learning continued until September 2021.

The claimant did not call witnesses to testify on her behalf and no testimony from any supervisor at employer [A] participated as a witness during the remand hearing.

The claimant's failure to produce all of the documentation requested by the [Board of Review], her inconsistent testimony about her employment history, as well as her failure to produce any additional witnesses from employer [A] to testify in this issue detract from her credibility that she had work in Massachusetts in 2020 that was impacted by COVID-19.

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 agree with the review examiner's legal conclusion that the claimant has not met her burden of showing that she was out of work for a reason listed under the CARES Act, since the week beginning December 20, 2020.

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. Individuals may be eligible for PUA benefits as long as they are unemployed, partially unemployed or unable or unavailable to work for a qualifying reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk).² 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.³

The record reflects the claimant worked full-time as a certified nursing assistant throughout 2020–2021 for Massachusetts employers. She worked full-time, 40 hours per week, for employer [A] from 2019 until she voluntarily left that employment in April of 2020. *See Consolidated Findings ## 2 and 12.* Upon separating from employer [A], the claimant commenced working full-time for employer [C] and continued to work for [C] until she left that position in the 4th quarter of 2021 for a new job with a new company, [E]. *See Consolidated Findings ## 11, 12 and 17.* The claimant contends that, while working for company [A], she had to stop working due to her children's remote learning in March of 2020.

In order to be eligible for PUA benefits due to a child's remote learning, the claimant must show, that, "a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work." CARES Act at § 2102(a)(3)(A)(ii)(I)(dd). Although the claimant has shown that her

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

² *See* CARES Act, § 2102(a)(3)(A)(ii)(I).

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

children were in remote learning at various stages commencing in March of 2020, she is not eligible for PUA benefits. *See Consolidated Finding # 7.*

The claimant did not file her claim for PUA benefits until February 8, 2021, with an effective date of December 20, 2020. PUA claims filed after December 27, 2020, may be back dated no earlier than December 1, 2020, with an effective date of December 6, 2020.⁴ This means that the claimant is time-barred from back dating her claim for PUA benefits to weeks prior to her effective date.

The review examiner found that the claimant did not have work in Massachusetts in 2020 that was affected by COVID-19. *See Consolidated Finding # 13.* The record reflects that the claimant worked full-time for employer [C] for the bulk of 2020 and 2021. *See Consolidated Findings ## 10, 11 and 16.* The claimant argued that she was not working for employer [C] but employer [A] when she was affected by COVID-19. However, even when the review examiner presented the claimant with evidence to the contrary, the claimant could not recall any details of her work with [C]. The consolidated findings show that, during the time the children were in remote learning, the claimant was working full-time. Therefore, she was not unemployed or unable to perform her duties because of their school closure.

During the hearing, the claimant also contended that she was unable to perform her duties as a certified nursing assistant, because she and her husband were both diagnosed with COVID-19. *See Consolidated Finding # 6.* In order to be eligible for PUA benefits, the claimant must show that she was out of work because “[she] has been diagnosed with COVID-19 or is experiencing symptoms and is seeking medical attention” and that “[she] was providing care for a family member or a member of [her] household who has been diagnosed with COVID-19.” CARES Act, § 2102(a)(3)(A)(ii)(I)(aa) and (cc). However, the claimant failed to provide any evidence showing she was unable to work due to her COVID-19 diagnosis and failed to provide any evidence showing she had lost work to care for her husband at the time of his diagnosis.

We, therefore, conclude as a matter of law that the claimant has not demonstrated that she was out of work for a qualifying reason under the CARES Act, § 2102(a)(3)(A)(ii)(I).

The review examiner’s decision is affirmed. The claimant is not entitled to receive PUA benefits.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 28, 2022



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

⁴ *See* UIPL No.16-20 Change 4, Attachment I, Section C.15 pages I-18 and I-19.

**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.

DY/rh