

**Although the claimant’s children were home because their schools closed due to the COVID-19 public health emergency, the claimant failed to demonstrate that she lost work as a result. She is not eligible for PUA benefits.**

**Board of Review  
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**Issue ID: N6-H35N-N85L**

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. Benefits were denied on the ground that the claimant did not establish that she became unemployed or partially 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.

The claimant had filed a claim for PUA benefits with the DUA, effective March 8, 2020, which was initially approved. However, in a determination issued on February 12, 2021, the claimant was disqualified. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency’s determination and denied PUA benefits in a decision rendered on April 1, 2021. The claimant sought review by the Board, which affirmed, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On October 29, 2021, the District Court ordered the Board to obtain further evidence pertaining to two issues: (1) the actual date that the claimant filed her PUA application; and (2) the contents of conversations between the claimant and DUA customer service concerning the weeks that she should certify for after filing her claim. Consistent with this order, we remanded the case to the review examiner for an additional hearing. The claimant and her attorney participated in the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner’s decision, which concluded that the claimant had not shown that her job was negatively impacted by the need to be home with her children when their schools closed due to COVID-19, is supported by substantial and credible evidence and is free from error of law.

After reviewing the entire record, including the recorded testimony and evidence from the original and remand hearings, the review examiner’s decision, the claimant’s appeal, the District Court’s Order, and the consolidated findings of fact, we affirm the review examiner’s decision.

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 Pandemic Unemployment Assistance (PUA) on May 20, 2020, with an effective date of March 8, 2020.
2. The claimant filed for PUA because her children were out of school.
3. On the claimant's initial application for PUA, the claimant selected, "a child or other person I care for is unable to attend school or another facility as a result of COVID-19."
4. Prior to filing her claim for PUA, the claimant was employed as a cashier at a fast-food restaurant in Massachusetts.
5. The claimant lives in Massachusetts.
6. The claimant has minor children who attend public schools in Massachusetts.
7. The claimant filed her claim for PUA with an effective date of March 8, 2020, because her minor children were home from school beginning at that point.
8. After the claimant's children were home from school, she continued to work as a cashier at the fast-food restaurant.
9. The claimant worked 103 hours in the first quarter of 2020, 129 hours in the second quarter of 2020, and 51 hours in the third quarter of 2020 at the fast-food restaurant.
10. The claimant quit her job as [a] cashier in July 2020 because she was moving from one town in Massachusetts to another town in Massachusetts.
11. The claimant was issued a Notice of Non-Monetary Issue Determination dated February 12, 2021, informing the claimant that she was not eligible for PUA benefits.
12. The claimant filed a timely appeal related to this Notice of Non-Monetary Issue Determination.

#### Credibility Assessment:

Although the claimant testified at the remand hearing that she had "dozens" of phone conversations with DUA representatives regarding what weeks she should certify for after filing her claim, the claimant could only specifically recall any details from one phone conversation. The claimant testified that the DUA representative told the claimant she could date her claim for PUA back to March 2020 because that was when her children began staying at home from school due

to the pandemic. The claimant was unable to recall any other communications with any customer service representatives from the DUA. It is unlikely that the claimant would have had dozens of phone conversations with the DUA regarding which weeks she should certify for after filing for benefits and only recall details from a single phone conversation. Additionally, the claimant's recollection of the phone conversation was self-serving. Furthermore, the claimant failed to mention this phone conversation at her first hearing. Therefore, it is concluded that the claimant's testimony regarding the specific contents on the May 20, 2020, phone conversation is not credible and has no indicia of reliability. As such, it cannot be concluded that the claimant had a phone conversation with a DUA representative on May 20, 2020 in which the representative instructed the claimant to file her claim and certify for weeks going back to March 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. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant is not 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.<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. In order to meet the definition of a covered individual, an individual must be "unemployed, partially unemployed, or unable or unavailable to work" for a reason listed under the CARES Act. § 2102(a)(3)(A)(ii)(I). One of those reasons is 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.*" § 2102(a)(3)(A)(ii)(I)(dd) (emphasis added). Among the criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk), is an individual who is an employee and has experienced a reduction in hours as a direct result of the COVID-19 public health emergency.<sup>2</sup>

In this case, the claimant asserts that she had to reduce her hours of work because she needed to be home to care for her two school-aged children whose schools were closed due to the COVID-19 public health emergency. Although there is no question that the claimant's children's schools closed due to the pandemic, the claimant has failed to show that she worked fewer hours as a result.

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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 6 (Sept. 3, 2021), Attachment I, (kk)(4), p. I-7.

After remand, the consolidated findings clarify that the claimant filed her PUA claim on May 20, 2020. *See Consolidated Finding # 1.* The claim was made effective March 8, 2020, because that is when her children’s schools closed. *See Consolidated Finding # 7.* During the remand hearing, the claimant’s attorney maintained that the claimant filed her claim in May, because that is when she experienced a decrease in work, in the second quarter of 2020, and that she only agreed to make the claim retroactive to March 8, 2020, the first quarter of 2020, based upon guidance from a DUA representative.

During the original hearing, the claimant testified that, prior to the pandemic, she was working “probably like 10–12” hours per week and that after her children were out of school, she was working “seven hours a week.” However, while on the record with the claimant, the review examiner looked up wage information reported to the DUA and confirmed with the claimant that she made less money and worked fewer hours during the first quarter of 2020 (January through March, 2020), than during the second quarter of 2020 (April through June, 2020). *See Consolidated Finding # 9.* In response, the claimant stated that she might have worked an extra hour or two but thought she worked more in the first quarter.<sup>3</sup> Nothing in either of the employment records presented for the hearing supports the claimant’s belief that she worked less in the second quarter or contradicts the DUA records.<sup>4</sup>

Further, when the claimant stopped working in July, 2020, it was because she moved to another town. *See Consolidated Finding # 10.* This is not among the listed reasons for PUA eligibility under the CARES Act.

We, therefore, conclude as a matter of law that the claimant has failed to demonstrate that she was unemployed or partially unemployed as a direct result of the COVID-19 public health emergency within the meaning of 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 as of the week beginning March 8, 2020.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 10, 2022**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

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<sup>3</sup> We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

<sup>4</sup> *See* Exhibit 6, the claimant’s 2020 Form W-2. The claimant also produced a paystub for the period May 3–9, 2020, which does show that, during this week, the claimant worked 4.45 hours and was paid for 4.00 hours of sick pay. However, there are no paystubs or other payroll records to show the number of hours worked in earlier weeks from which to make a comparison. These records are also part of the unchallenged evidence in the record.

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.

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