

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

**Issue ID: N6-H374-7V3K**

### 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 6, 2020, which was denied in a determination issued on February 6, 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 12, 2021. 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. We accepted the claimant's application for review.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant lost his employment due to allegedly falsifying wage records and not for a listed reason under the CARES Act, is supported by substantial and credible evidence and is free from errors of law.

### Findings of Fact

The review examiner's findings of fact and credibility assessment are set forth below in their entirety.

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) with an effective date of December 6, 2020.
2. On February 16, 2021, the Department of Unemployment Assistance (DUA) issued 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. He was informed that he was not eligible to receive benefits, because he failed to respond with the appropriate documentation by the due date.
3. Prior to filing his claim, the claimant worked as a manager at a grocery store. He worked at the grocery store until August 22, 2020.

4. The claimant's children's school closed due to the pandemic.
5. The grocery store fired the claimant because he intentionally falsified wage records.
6. The claimant was not let go due to COVID-19.

[Credibility Assessment:]

The claimant testified that prior to applying for PUA he worked as the manager of the seafood department for a grocery store in [City A], Massachusetts, until he was terminated from this position on August 22, 2020. According to the claimant's testimony, he was terminated because he was unable to maintain a 40-hour schedule due to having to care for his children while they attend school remotely from home. He further explained that his inability to maintain a 40-hour schedule was due in large part to the recent firing of his assistant manager, whom the claimant relied upon to cover his duties in the seafood department if he needed to leave to provide care for his children. The claimant testified that his assistant manager was accused of falsifying time records, which he believed was a false accusation due to the fact that the claimant himself had to approve his assistant's time submissions, and that store management forced him to sign off on the firing despite his disagreement with the decision.

After his termination from the grocery store, the claimant applied for regular Unemployment Insurance benefits (UI) in September 2020. At the hearing the review examiner looked up the claimant's regular UI claim on the Massachusetts Unemployment Insurance online system and saw that the claimant stated in that application that he was terminated for falsifying wage records. When confronted with this information, the claimant denied that he was the one who had been accused of falsifying wage records, and insisted that he was fired because he asked for reduced hours in order to care for his children. He later testified that he was fired in August because he did not show up for his assigned shifts due to having to care for his children who were in remote learning at the time. The review examiner asked the claimant why on his regular UI application he wrote that he was discharged for falsifying time, to which the claimant responded that he selected that option because it best described his situation, and that there was no selection choice relating to having to quit for childcare reasons.

The claimant later testified that it was actually June and July that he began calling out to care for his children, despite also stating that his children were not in school at the time. As proof that he had to care for his kids due to their attending school remotely, the claimant provided copies of an order from Probate and Family Court awarding his custody of his children during the week, as well as an email from his children's school from September 2020 stating that hybrid learning would be suspended until November of 2020.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner’s decision, and the claimant’s appeal, we conclude that the review examiner’s decision is based on substantial evidence and is free from any error of law affecting substantive rights.

We note that the review examiner relied on information from the DUA’s electronic database for regular unemployment benefits, specifically the claimant’s application for regular unemployment benefits, in finding that the claimant was discharged for falsifying wage records, and not for reasons related to childcare, as he had alleged. However, prior to doing so, the review examiner discussed the conflicting statements appearing in the claimant’s regular unemployment application with the claimant during the hearing. The claimant was given an opportunity to dispute this information, which he did not do. Although he denied that he was discharged for falsifying records, he acknowledged representing to the DUA in his regular unemployment application that he was discharged for that reason.<sup>1</sup>

The review examiner’s decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning December 12, 2020, and indefinitely thereafter.

**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.

**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)

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<sup>1</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).

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.

RG/rh