

The claimant established that he had a scheduled job offer at a dental office in 2020 that was rescinded due to the COVID-19 public health emergency. He is therefore entitled to PUA benefits.

**Board of Review
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Issue ID: N6-H4LT-FKPM

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 March 15, 2020. On March 24, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination-COVID-19 eligibility, informing him that he was not eligible to receive PUA benefits. 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 in a decision rendered on May 17, 2021. We accepted the claimant's application for review.

The review examiner concluded that the claimant was ineligible for PUA benefits on the basis that the claimant failed to present sufficient evidence to verify that a scheduled job offer in Massachusetts was made and revoked due to the COVID-19 public health emergency in 2020. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case for additional evidence for the review examiner to consider the documents submitted with the claimant's Board appeal. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact and credibility assessment. 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 was ineligible for PUA benefits because he failed to prove that he lost a scheduled job offer due to a listed COVID reason, 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 March 15, 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 applied for a job with a dental company as a dental assistant on February 15 or 16, 2020. He received an email and letter, both dated February 17, 2020, offering him the job, to begin on or about March 23, 2020. The offer did not require the claimant to obtain a license prior to hire.
3. Although the fully certified job required a license, the company was permitted to hire the claimant initially on an on-the-job-training basis pending his sitting for the license exam.
4. An unlicensed dental assistant is limited in the duties they can perform. A licensed dental assistant can perform the full range of duties of the job. The company encouraged the claimant to obtain his license.
5. The claimant applied to take the exam for the license and paid the fee for the exam on February 24, 2020. The claimant had a range of testing dates and testing centers from which to choose to sit for the exam. In mid-March 2020, all of the testing centers were closed due to the COVID-19 pandemic. The claimant could not take the exam at any testing center at that time due to COVID-19.
6. At that time, the dental company was forced to close all of their locations because of the pandemic. The dental company revoked the dental assistant position offered to the claimant in March 2020 because of the COVID-19 pandemic.
7. The public schools in the city in which the claimant lives closed due to the pandemic. The claimant's wife, who was a teacher's assistant with the school system, was able to stay home with the children as they attended classes remotely.
8. The dental company did not tell the claimant he would be hired once his license was issued.
9. The claimant took the dental assistant exam in January 2021 and began a job with the company in that position on February 2, 2021.
10. On March 24, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits as of the week ending February 8, 2020.
11. The claimant appealed the DUA's determination.

Credibility Assessment:

This examiner finds the claimant's testimony and evidence to be credible. The claimant's testimony was consistent, persuasive, detailed, and he was forthright in his answers to the examiner's questions during the remand hearing. The claimant submitted the contemporaneous job offer email and letter dated February 17, 2020. This examiner credits the letter dated June 11, 2021, as authentic and credible. The claimant clarified his earlier testimony that he was advised that the position for which he applied required a license; he explained that the company encouraged him to obtain the license, but also advised him that they could offer him the position on an on-the-job-training basis, pending his sitting for the license exam. That explanation is consistent with the statement in the June 11 letter that the company offered the claimant a job to begin March 23, 2020. The claimant also clarified during the remand hearing that he was not actually scheduled to take the exam on February 24, 2020 – instead, he applied to take the exam and paid on that date and then had a range of dates and locations to choose from, which he credibly testified were cancelled due to 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 disagree with the review examiner's legal conclusion that the claimant failed to prove that he is eligible for PUA benefits under his Massachusetts claim.

The claimant in this case seeks PUA benefits, a new 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.¹ In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act. Among the criteria for eligibility under the CARES Act is § 2102(a)(3)(A)(ii)(I)(gg), which provides that an individual will be eligible for PUA benefits if he or she 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." 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.² Therefore, in order to be eligible for benefits, the claimant must show that he had scheduled work in Massachusetts that was negatively affected for a listed COVID-19 reason.

In this case, the review examiner found that the claimant was offered a dental assistant position to begin on or about March 23, 2020. *See* Consolidated Finding # 2. He also found that the employer

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

² *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

revoked the offered dental assistant position in March 2020 because of the COVID-19 pandemic. See Consolidated Finding # 6.

The claimant satisfied the requirement to show that he had a pending job offer for 2020 work in Massachusetts with the production of the February 17, 2020, job offer letter, Exhibit 9, which shows that he was offered a dental assistant position to work at three different Massachusetts locations and to begin on March 23, 2020. While this letter was not explicitly incorporated into the review examiner's findings, it is part of the unchallenged evidence introduced at the remand 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).

These facts show that the claimant was scheduled to commence employment in Massachusetts and did not have a job as a direct result of the COVID-19 public health emergency.

We, therefore, conclude as a matter of law that the claimant has demonstrated that he was out of work for the COVID-19 listed reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg).

The review examiner's decision is reversed. The claimant is eligible for PUA benefits as of the week beginning March 15, 2020, and for subsequent weeks, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 19, 2022

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

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