

Claimant, a self-employed contractor, was eligible for PUA benefits, where he showed he owned and operated his business in Massachusetts and New Hampshire and suffered a suspension of his customary services.

**Board of Review
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Issue ID: N6-H5HJ-4VFD

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 an effective date of December 20, 2020, which was denied in a determination issued on April 13, 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 September 24, 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 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 failed to provide sufficient evidence to show that he was working in Massachusetts as a self-employed mason in 2020 and that this 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 findings of fact 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 \$267.00 per week on the claim.
2. The claimant filed the PUA claim using a [City A], Massachusetts address.
3. The claimant is self-employed as a sub-contractor specializing in masonry.

4. The claimant takes jobs in different states around New England, although he most often works in Massachusetts.
5. The claimant has tax returns from 2019 and 2020 with Schedule Cs on which he reported his income from his masonry business and listed his [City A], Massachusetts address.
6. The claimant has a 2019 Form 1099 documenting payment he received from a Massachusetts client and an affidavit from the client stating that the claimant has worked for the client for many years, and last completed a job for them in August 2019.
7. From around August 2019 through December 2020, the claimant worked exclusively on a project in New Hampshire under a contractor from New Hampshire.
8. The claimant has a 2019 Form 1099-MISC and a 2020 Form 1099-NEC documenting his income from the project he was working on in New Hampshire.
9. The gross receipts or profits that the claimant reported on his 2020 Schedule C match the amount of non-employee compensation reported on the claimant's 2020 1099-MISC that he received from the contractor he was working for in New Hampshire.
10. The contractor for whom the claimant was working became concerned about the claimant commuting from [City A], Massachusetts to the rural New Hampshire job site as COVID-19 infection rates rose in [City A].
11. The claimant has text messages that he exchanged with the contractor in October 2020 regarding the claimant's COVID exposure and status.
12. In late December 2020, the contractor told the claimant not to return to the project in New Hampshire due to his concerns about the COVID-19 pandemic.
13. On April 13, 2021, the DUA sent 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, through the week ending March 27, 2021.
14. The claimant appealed the DUA's determination.

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 are supported by substantial and credible

evidence; and (2) whether the review examiner's original conclusion is free from error of law. After 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 disagree with the review examiner's legal conclusion that the claimant has not met his burden of showing that he was out of work for a reason listed under the CARES Act.

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. In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act.¹ Individuals may be eligible for PUA benefits as long as they are unemployed or partially unemployed for a qualifying reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). Among the criteria for eligibility under § 2102(a)(3)(A)(ii)(I)(kk), is that an individual will be eligible for PUA benefits “if the individual, was self-employed (including independent contractor and gig worker) and he or she is unemployed, partially unemployed, or unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities and has thereby forced the individual to suspend such activities.”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. “If the individual worked in more than one state at that time, the individual may file a PUA claim in any of those states.”³ Therefore, in order to be eligible for benefits, the claimant must show that his work in Massachusetts was negatively impacted by the COVID-19 pandemic.

Here, the claimant demonstrated that he lived in Massachusetts and operated a masonry business located in [City A], Massachusetts. The claimant provided 2019 and 2020 tax returns, showing that he owned and operated a masonry business in Massachusetts. *See* Finding of Fact # 5. The claimant predominately worked in Massachusetts but has taken work in other New England states. *See* Finding of Fact # 4. From August of 2019 until December of 2020, the claimant was a subcontractor performing masonry work in New Hampshire. *See* Finding of Fact # 7. In October of 2020, the contractor notified the claimant, via text messages, of his concerns regarding the claimant's exposure to COVID-19. *See* Finding of Fact # 11. The contractor continued to stress concerns about the claimant commuting from Massachusetts to New Hampshire because of the increases COVID-19 infection rates in [City A]. *See* Finding of Fact # 10. Ultimately, in late December of 2020, the contractor notified the claimant that he did not want him to return to the New Hampshire project because he had concerns about the COVID-19 pandemic. *See* Finding of Fact # 12. The claimant testified he was unable to find any additional work due to the pandemic until September of 2021, where he found work performing small masonry projects.⁴

The findings further provide that the claimant received a 2020 Form 1099-NEC from the New Hampshire contractor and reported all income on his Massachusetts state tax return. *See* Findings of Fact ## 8 and 9. He originally filed a claim for PUA benefits in New Hampshire and was

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

² *See* Unemployment Insurance Program Letter (UIPL) 16-20, (Apr. 5, 2020), Attachment I, C(1)(k), p. I-6.

³ *See* UIPL 16-20, Change 6, (Sept. 3, 2021) pp. 7-8.

⁴ The claimant's testimony, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the 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).

informed by the field auditor that he was not eligible for benefits in New Hampshire and was instructed to file a claim in Massachusetts as it was the proper forum.⁵

Because the claimant has shown that he operated his business in Massachusetts and has experienced a suspension of his customary or usual services because of the COVID-19 public health emergency, he has established that he is unemployed for a reason related to COVID-19 listed under § 2102(a)(3)(A)(ii)(I)(kk), and that he was eligible to file a PUA claim in Massachusetts.

We, therefore, conclude as a matter of law that that that the claimant has shown that he was unable to work in Massachusetts for the reason listed under the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits in the week beginning December 20, 2020, and in subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 10, 2022



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

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⁵ See Exhibit 6, an e-mail dated March 29, 2021, from the New Hampshire Employment Security field auditor which is also part of the unchallenged evidence.