

Claimant, who performed part-time wage-paying services through a job training program, was not eligible for PUA benefits, where the program did not shut down, but merely went remote, and the claimant failed to establish any diminished payment. The claimant continued to work until her employment ended for a reason unrelated to COVID-19. She is not eligible for PUA benefits.

**Board of Review
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Issue ID: N6-H5K5-97D3

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 we affirm in part and reverse in part.

The claimant filed a claim for PUA benefits with the DUA, effective April 5, 2020, which was denied in a determination issued on April 1, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner overturned the agency's initial determination, in part, and awarded PUA benefits in a decision rendered on June 17, 2021. We accepted the claimant's application for review.

Benefits were awarded after the review examiner determined that the claimant established 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 eligible for some of the PUA benefits for which she had certified. 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 was entitled to receive benefits from April 5, 2020, through the week ending July 4, 2020, but not entitled to benefits beginning the week ending July 11, 2020, and thereafter, is supported by substantial and credible evidence and 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 April 5, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$268 per week on the claim.

2. The claimant filed the PUA claim using a Massachusetts address.
3. The claimant's date of birth is in December of 1996.
4. Since 2017, the claimant has participated in activities at a youth center program (the program), filling in applications and obtaining work skills. She is paid for doing these activities. The program is open to individuals aged 16 through 24.
5. In February and March of 2020, the claimant was still engaging in the activities at the youth center.
6. In mid-March of 2020, the program's site location closed due to the COVID-19 pandemic. Services and activities stopped, and the claimant was no longer paid to do them.
7. Beginning in May of 2020, the program started up again remotely. The claimant did activities for fewer hours than prior to the start of the pandemic. Often, she would finish the work quickly.
8. In July of 2020, the claimant's case manager called her and told her that the program no longer wanted her to work. The claimant did not challenge her case manager on this decision, nor did she ask for more work or activities to do, so that she could continue to be paid.
9. Although she was not sure, the claimant thought that the program decided that she should no longer work, because the program perhaps felt that the claimant was not taking the activities or program seriously enough. She thought that the program or case manager may have felt that she was taking advantage of the program (being paid continuously, but not actually obtaining any jobs or work).
10. The claimant did not try to stay with the program, as she was going to age out of it soon anyway, and she thought that she could obtain a new job elsewhere, making more money.
11. Since sometime in July of 2020, the claimant has not worked.
12. On April 2, 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.
13. 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 with the exception of the portions of Findings of Fact ## 6 and 7, which state that the program stopped all activities and services in mid-March, 2020, the claimant was no longer paid, and that it started up again in May, 2020, as this is inconsistent with the record.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, however, we disagree with the review examiner's legal conclusion that the claimant is entitled to receive benefits, from April 5, 2020, through the week ending July 4, 2020.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under § 2102 of the CARES Act and administered by the U.S. Secretary of Labor.² In order to qualify for PUA benefits, the claimant must show that she is a covered individual within the meaning of the CARES Act. To be eligible for PUA benefits, individuals must be unemployed or partially unemployed for a qualifying reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk) of the CARES Act. Among the criteria for eligibility established by the U.S. Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk), is that an individual will be eligible for PUA benefits if the individual has experienced a reduction in hours as a direct result of the COVID-19 public health emergency.³

The claimant worked part-time for the youth center program. On appeal from her initial DUA determination, the claimant provided two paystubs from the program: (1) pay period February 23, 2020, to February 29, 2020, showing 4 hours of work with wages in the amount of \$51.00; and (2) pay period March 1, 2020, to March 7, 2020, showing 15 hours, with wages in the amount \$191.25. See Exhibits 6 and 7. The claimant, apparently, was not required to work a predetermined set number of hours. She testified that attendance was not mandatory, she was able to work remotely, and she continued to work until approximately the end of June or the beginning of July 2020.⁴ Thus, the evidence submitted by the claimant does not show any diminution in wages. It further fails to show that she experienced a reduction in hours as a direct result of the COVID-19 public health emergency, pursuant to § 2102(a)(3)(A)(ii)(I)(kk).⁵

¹ Though the physical location did close, services continued throughout the pandemic and the claimant received payment. Exhibit 8 is a letter from the program's case manager, which showed that since the beginning of the pandemic, the program was closed for *in person services only but continued to operate remotely* to provide program participants with services and support, and that the program's hours would vary week to week depending upon scheduling, available workshops, virtual college tours, and other activities. The claimant further testified that it was mandatory for her to work from home and that she was working from home in March of 2020. Thus, the program never ceased operations, but began immediately operating remotely, when its physical site closed in mid-March. Finally, the claimant testified that the program reopened for in person services in mid-April of 2020. While not explicitly incorporated into the review examiner's findings, this 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).

² Pub. L. 116-136 (Mar. 27, 2020), § 2102.

³ 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.

⁴ Claimant testified that the program was not strict on attendance; "if you come, you come". This testimony, as well as Exhibits 6 and 7, are also part of the unchallenged evidence in the record.

⁵ An individual must report any earnings from the reduced hours when filing a continuous claim. See UIPL 16-20 Change 6, Attachment I, (kk) 4, p. I-7.

In addition, the claimant asserted on her initial application for PUA benefits that she was out of work because her place of employment closed as a direct result of COVID-19. In accordance with § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act, an individual will be eligible for PUA benefits if the individual's place of employment is closed as a direct result of the COVID-19 public health emergency. But, as noted in Exhibit 8, the program continued to operate during the pandemic, and the claimant continued to work even after the office went remote.

In July of 2020, the claimant's employment was terminated. The claimant believed it was because she was not taking the work seriously and she did not inquire further. *See* Findings of Fact ## 8 and 9. Since the claimant's termination was unrelated to COVID-19, she is not eligible for benefits after July 4, 2020.

We, therefore, conclude as a matter of law that that the claimant has not met her burden to show that she was out of work for any of the criteria for eligibility under § 2102(a)(3)(A)(ii)(I)(aa) - (kk) of the CARES Act.

The review examiner's decision is affirmed in part and reversed in part. The claimant is not entitled to receive PUA benefits from the week beginning April 5, 2020, and indefinitely thereafter.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 17, 2021



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:

We take administrative notice of the claimant's reported weekly wage certification(s) in the DUA's electronic database for PUA (Fast UI), as well as wages reported for the claimant in the DUA's UI Online electronic database. These DUA records reflect that the claimant only reported wages totaling \$220.00 for the week ending April 25, 2020. However, the claimant's Monetary History in UI Online shows she was paid \$2,805.00 in the second quarter of 2020 by the program. Although the claimant admitted at the hearing that she continued to work and receive payment during this period, she did not report any wages for the remaining weeks she certified for PUA benefits.

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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