

When the claimant’s school forced her to study remotely from home due to the COVID-19 public health emergency, her pizza shop job near campus effectively became unreachable due to an unreasonably long commute of almost two hours each way. Held she was unemployed for a listed CARES Act reason and eligible for PUA benefits.

**Board of Review
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Issue ID: N6-H627-JPL9

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 March 1, 2020, which was denied in a determination issued on April 19, 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 June 23, 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 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 not eligible for PUA benefits. After considering the recorded testimony and evidence from the hearing, the review examiner’s decision, and the claimant’s appeal, we remanded the case to the review examiner to consider additional evidence pertaining to the reason and dates that the claimant stopped working. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. 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 not eligible for PUA benefits because she did not show that she stopped working at a pizza shop due to the COVID-19 public health emergency, 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 1, 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 filed the PUA claim using a Massachusetts address.
3. The claimant was enrolled at and lived on the campus of a Massachusetts university during the spring semester of 2020.
4. During the last week before the claimant's spring break, the claimant worked at a pizza restaurant in the same city as the university.
5. The claimant spent spring break (the week of March 16, 2020) with her family, including her husband, in [City A] and continued to work for a day or two that week.
6. To reach the restaurant, the claimant had to commute by train, and the trip required almost two hours each way.
7. On March 16, 2020, because of the COVID-19 public health emergency, it was announced that classes would be conducted virtually for the rest of the school year. Students, including the claimant, were sent away from the campus.
8. The claimant never returned to campus after her spring break.
9. The claimant has remained enrolled at the school and has continued to attend classes at the school remotely.
10. The claimant last worked at the pizza restaurant on or about March 16, 2020, and the claimant has not returned to work at the pizza restaurant since then.
11. The claimant's final paycheck from the pizza restaurant was deposited on March 20, 2020.
12. Because the claimant was no longer living on campus and was no longer going to campus to attend her classes and was living a significant distance away from the city where the pizza shop was located, it was no longer convenient for her to reach the pizza shop.
13. On April 19, 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.
14. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant testified that she attended and lived on the campus of a Massachusetts university. Emails issued from the school to the claimant, the school's academic calendar for the 2019-2020 school year, and the claimant's class schedule for the

spring 2020 semester together established that the claimant was enrolled at the Massachusetts school and was sent away from campus because of the COVID-19 public health emergency in the middle of March of 2020. The school [sic] was in the same city as the university. Under these circumstances, the claimant no longer lived near the pizza shop and she no longer had reason, aside from her job, to commute there. The claimant's testimony that she lived and attended school in Massachusetts and that she had to stop working is supported by her W-2; her bank statements, which show two deposits, the last of which was on March 20, 2020; and an online map showing that the claimant's commute by public transportation, now that she was living away from campus with her family and relied on train, was approximately two hours.

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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible 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.¹ In order to qualify for PUA benefits, the claimant must show that she is a covered individual within the meaning of the CARES Act. Among the criteria for eligibility is § 2102(a)(3)(A)(ii)(I)(ee), which states, "the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency." We also note that the U.S. Secretary of Labor has issued guidance with examples of situations that fall under each listed reason, but that guidance advises states to consider other circumstances which align with the listed reasons.²

In this case, the consolidated findings show that, in early March, 2020, the claimant was enrolled at a university and living on campus in Massachusetts. *See Consolidated Finding # 3.* During this spring semester, she started working at a local pizza shop in the same city. *See Consolidated Finding # 4.* She returned home for the university's spring break, scheduled from March 14–20, 2020. *See Consolidated Finding # 5 and Exhibit 30.*³ Although she lived almost two hours away, she commuted the distance to work one or two days at the pizza shop during this week, presumably

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

² *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), Attachment I, p. I-1.

³ Exhibit 29 is the university's 2019–20 academic calendar, which shows the exact dates scheduled for spring break. While not explicitly incorporated into the review examiner's findings, it 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).

in order to keep her job. *See* Consolidated Finding # 5. However, on March 16, 2020, the university announced that, due to the COVID-19 public health emergency, it was moving to remote instruction for the remainder of the semester and students were not to return to campus. *See* Consolidated Finding # 7. The university's decision was reinforced by the Governor's Stay at Home Advisory issued on March 23, 2020. *See* Exhibit 22.⁴ After the university's March 16, 2020, announcement, the claimant stopped working at the pizza shop. *See* Consolidated Finding # 10.

We think this evidence demonstrates that the claimant had to stop working due to the COVID-19 public health emergency. Effectively, the university's decision to require all students to stay away from campus and study remotely in conjunction with the Governor's Stay at Home Advisory was akin to a quarantine order necessitated by the pandemic. Because of these directives, the claimant had to continue her studies from home, too far away to reach her work at the pizza shop without an unreasonably long commute. We believe these circumstances align with the COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(ee).

However, the consolidated findings also show that, before the school's announcement, the claimant had planned to live at home and sustain the longer commute through the week of her previously scheduled spring break, March 14–20, 2020. This shows that the university's remote learning directive and the Stay at Home Advisory did not affect her ability to keep working until the following week, when she would have otherwise returned to campus. Thus, the claimant's continued employment at the pizza shop was not impacted by the school's decision or the Governor's advisory until the week beginning March 22, 2020. She is not eligible for PUA benefits until then.

We, therefore, conclude as a matter of law that the claimant has established that she became unemployed for the listed COVID-19 reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(ee).

The review examiner's decision is affirmed in part and reversed in part. The claimant is not entitled to receive PUA benefits from the effective date of her claim, March 1, 2020, through March 21, 2020. The claimant is entitled to receive PUA benefits as of the week beginning March 22, 2020, and for subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 18, 2022



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

⁴ Exhibit 22 is an email from the university to students referring to the Governor's Stay at Home Advisory, dated March 23, 2020. This is also part of the unchallenged evidence in the record.

**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.

AB/rh