

**The claimant established that her dog-walking services were significantly diminished beginning in March, 2020, as a result of the COVID-19 public health emergency, and she is eligible for benefits until they resumed to normal levels in 2021.**

**Board of Review  
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**Issue ID: N6-H64H-M222**

### 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 February 16, 2020, which was denied in a determination issued on April 15, 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 May 27, 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 had been working and lost that work 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 presented with her Board of Review appeal. 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 ineligible for PUA benefits because she has not established that she lost dog walking services 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 February 16, 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 began her dog walking business in June of 2019. Prior to the COVID-19 pandemic, the claimant worked 4-6 hours per week. No one else has provided dog walking services through the claimant's business.
4. The claimant received payments for her dog walking services through Venmo, Rover or by cash. The Rover dog walking app allowed the claimant to receive payments through PayPal.
5. Initially, the PayPal account was under a family account that was under the claimant's husband's name. The claimant changed the PayPal account to her name at the time that she received a denial letter from the DUA.
6. In March of 2020, the claimant was not able to operate her dog walking business, as her clients were working from home and did not need her services.
7. The claimant had minimal business from March to July of 2020 and then again from September of 2020 to February of 2021. The claimant was able to work in August of 2020 while some of her clients took vacations.
8. The claimant's business returned to normal in March of 2021.
9. The claimant has a Schedule C showing that she performed services as a dog walker in Massachusetts in 2019, 2020 and 2021.
10. The claimant's gross income for her dog walking services was: \$922 in 2019, \$1,574 in 2020 and \$19,156 in 2021[1].
11. On April 14, 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.
12. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant participated in both the initial and the remand hearing. The claimant provided her Schedule Cs from 2019 to 2021, and other various documents that verified her dog walking service. The claimant did change the name of the PayPal account from being under her husband's name to being under her name after the initial denial determination was issued. However, I find the claimant's testimony credible that she had earned the dog walking money that was added to the PayPal account while it was still in her husband's name.

Additionally, while the claimant testified that she was not able to work from March of 2020 to August of 2020 and then not again until March of 2021, she earned more in 2020 than she did in 2019 prior to COVID.

### 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 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.<sup>1</sup> 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 established by the Secretary of Labor, in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is that an individual will be eligible for PUA benefits if the person was "unemployed, partially employed, or unable or unavailable to work because 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."<sup>2</sup> Even if not suspended, a significant diminution of a claimant's customary or usual services due to the pandemic has also been determined to constitute an approved COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(kk).<sup>3</sup> 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.<sup>4</sup> Therefore, in order to be eligible for benefits, the claimant must show that she had work in Massachusetts that was diminished or stopped by the COVID-19 pandemic.

In this case, the claimant seeks PUA benefits from the effective date of her claim, February 16, 2020. The consolidated findings show that the claimant had been self-employed providing dog walking services starting in 2019 and prior to the onset of the COVID-19 public health emergency, working about 4-6 hours per week. *See Consolidated Finding # 3.* However, with the onset of the COVID-19 pandemic, beginning in March, 2020, her services were not needed because people were working from home. *See Consolidated Finding # 6.*

Although Consolidated Finding # 7 indicates that the claimant was able to perform some services in August, 2020, because some clients took vacations, her gross income for the entire year was only \$1,574. *See Consolidated Finding # 10.* The claimant testified that she charges \$40 per hour

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>2</sup> U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(k), p. I-6.

<sup>3</sup> *See* IPL 16-20, Change 6 (Sept. 3, 2021), (kk)(1), p. I-3 – I-4.

<sup>4</sup> *See* IPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

and, prior to the pandemic, was working four to six hours per week.<sup>5</sup> This means that her normal, non-pandemic work week generated about \$200 per week in gross earnings. Although this is an approximation, it is apparent that, during August when some clients went on vacation, she could not have made much money from her dog walking services. This evidence demonstrates that the claimant experienced a diminution of services due to the COVID-19 public health emergency.

However, nothing in the record indicates that her dog walking services were impacted by the pandemic prior to March, 2020. Therefore, we decline to award PUA benefits in February, 2020. Inasmuch as her business returned to normal levels in March, 2021, there is also no basis to award PUA benefits after February, 2021. *See Consolidated Findings ## 8 and 10.*<sup>6</sup>

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she experienced a significant diminution of services due to the COVID-19 public health emergency and is eligible for benefits pursuant to the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive PUA benefits from the week beginning March 1, 2020, through February 27, 2021, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 17, 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)

<sup>5</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).

<sup>6</sup> Although not clearly identified as an exhibit, the claimant submitted the first few pages of her 2021 Form 1040, including a 2021 Schedule C, which was referred to during the remand hearing and supports the review examiner's Consolidated Finding # 10 that the claimant had \$19,156 in gross earnings in 2021. This is also part of the unchallenged evidence in the record.

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