

**The claimant did not present any credible evidence to show that she had photography work scheduled in 2020 that was canceled as a direct result of the COVID-19 pandemic and therefore is not eligible for PUA benefits.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: N6-H7P6-P2DM**

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 affirm.

The claimant filed a claim for PUA benefits with the DUA, effective March 29, 2020, which was denied in a determination issued on May 27, 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 October 22, 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 claimant's self-employment in 2020. The claimant attended the remand hearing. Thereafter, the review examiner issued her 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 did not present sufficient evidence to show that her work as a photographer was substantially impacted by 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 is a self-employed photographer.
2. The claimant had 17 clients in 2019.

3. The claimant grossed \$5,450 in income and netted \$-1,011 in profits in 2019.
4. The claimant had 15 clients in 2020.
5. The claimant grossed \$3,325 in income and netted \$-4,039 in profits in 2020.
6. The claimant also has worked as a “second shooter” photographer for a wedding photographer.
7. The claimant was not scheduled to work as a second shooter for a set of six weddings that may have been available to her in 2020 if the pandemic had not occurred.
8. The wedding photographer had five weddings scheduled in 2020 for which she would have needed a second shooter. The scheduled dates were as follows: June 21, 2020, June 27, 2020, September 18, 2020, October 2, 2020, and October 30, 2020.
9. The claimant did not receive a text message in 2020 from the wedding photographer offering the dates for work throughout the year of 2020.
10. Three of the weddings the photographer had scheduled in 2020 were cancelled and two were postponed due to the pandemic.
11. The claimant has not since been scheduled to work on either of the weddings that were postponed, one of which was rescheduled for 2021, and one of which was rescheduled for 2023.
12. The claimant was not scheduled to work as a photographer for a bank in 2020.
13. The claimant was in communication by email with the bank on March 9, 2020 and March 10, 2020 to discuss being hired to take head shots of four new employees.
14. The claimant and the bank had not settled on a date, and the claimant had not yet provided a proposal and quote for the work.
15. The Governor of Massachusetts issued a state of emergency on March 10, 2020 due to the pandemic, before the claimant and the bank had settled on a date, and before the claimant had provided a proposal and quote for the work.
16. The claimant’s first and only attempt to make contact with the bank after the issuance of the state of emergency on March 10, 2020, was by email on August 4, 2020.

17. The bank did not respond to the claimant's email that was sent on August 4, 2020.

Credibility Assessment:

The claimant's testimony was responsive, forthright, and straightforward. However, her belief that she would have been hired for the weddings came from her knowledge of how she had been hired in the past. The claimant testified that she usually received one or two text messages per year from the wedding photographer offering the claimant a set of dates for work. She testified that she usually responded to the text messages for the dates in the near future, leaving dates in the following season for a later decision. When asked, the claimant could not remember if she had received a text message from the photographer in 2020 offering her the weddings. The claimant was asked if she was aware in March 2020 of the wedding dates that the photographer needed a second shooter for, and she answered, "not specifically." The claimant did not provide any text messages and stated that she had set her phone to not save text messages for more than one year, so they were not available if they existed. The claimant provided an email from the photographer to her that was dated November 16, 2021. The email gave the dates of the "weddings that [the claimant was] going to be hired for in 2020." There was no contemporaneous documentation showing that the claimant was hired for the six weddings. Therefore, it is concluded that the claimant's belief that she would have been hired was merely speculative and not indicative of actual scheduled work.

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 agree with the review examiner's legal conclusion that the claimant failed to show that she lost scheduled work due to the COVID-19 pandemic.

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.<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 self-employed individuals would be eligible for PUA benefits if they experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency, even absent a suspension of services. . . ."<sup>2</sup>

---

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

<sup>2</sup> See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1)(kk), p. I-8.

The claimant is self-employed as a photographer in Massachusetts. Consolidated Finding # 1. At both hearings, she testified that she lost substantial business in 2020, including several weddings, conferences, and family photography sessions, due to COVID-19 public health emergency. The review examiner rejected the claimant's testimony in this regard because she was not able to produce any contemporaneous documentation confirming that she had been hired to provide photography services after the effective date of her claim. Such assessments are within the scope of the fact finder's role and unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). The two pieces of correspondence submitted by the claimant in support of her contention showed only that, were it not for the onset of the COVID-19 pandemic, there may have been potential work opportunities available to the claimant. *See Consolidated Findings ## 8, 9, 11, 13, and 14.* Without additional evidence confirming that the claimant had actually secured work with these potential clients, we do not see a reason to disturb the review examiner's credibility assessment.

We, therefore, conclude as a matter of law that claimant has not met her burden to show that she was in unemployment within the meaning of the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning February 2, 2020.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 19, 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)

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.

LSW/rh