

The DUA's determination notice to disqualify the claimant from receiving PUA benefits was issued more than a year after the claimant received her first PUA benefit payment. Since there is no evidence that the claimant was paid based upon a misrepresentation of fact, the determination notice to disqualify her was time barred pursuant to G.L. c. 151A, § 71, and she may not be denied benefits.

**Board of Review
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Member**

Issue ID: N6-H852-6684

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 the DUA, effective March 15, 2020, and was initially approved. However, on June 8, 2021, the DUA issued a Notice of Non-Monetary Issue Determination COVID-19 Eligibility (Notice), determining that the claimant was ineligible for PUA benefits. 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 in a decision rendered on October 26, 2021. We accepted the claimant's application for review and remanded the case for additional evidence in connection with a document submitted with the claimant's Board appeal.

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 recorded testimony and evidence from the original and remand hearings, the review examiner's decision, the claimant's Board appeal, and the DUA's electronic record-keeping system (FAST UI).

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 an application for Pandemic Unemployment Assistance (PUA) with an effective date of March 15, 2020. The Department of Unemployment Assistance (DUA) determined her weekly benefit amount to be \$267.00.
2. The claimant is a self-employed music teacher in Massachusetts.

3. From 2014 until August 2021, the claimant's business was exclusively dependent upon service contracts from one vendor. The vendor partners with schools to provide music lessons or therapy to children. The company would out-source the claimant to various independent schools in Massachusetts.
4. Prior to 2021, the claimant had, on average, [four] contracts per academic year from the vendor to provide music services to children attending independent schools.
5. The claimant only operated her business six months in 2019 because she had to care for her child with special needs. Prior to that, she had twins in 2017 so she could not devote much time to her business in 2018.
6. According to the claimant's 2019 tax returns, her business operated at a loss of \$455 in 2019.
7. In 2020, the claimant's business operated at a net profit of \$629, as noted on her 2020 1040 return. All of the claimant's 2020 business income was earned between January 1, 2020, and March 16, 2020.
8. After March 16, 2020, the schools closed due to COVID-19. Consequently, the claimant did not receive any contractual business from the vendor between March 2020 and August 2021.
9. The claimant did not report any business earnings or losses on her 2021 tax returns.
10. The claimant entered into an employment agreement with the vendor in August of 2021 and became a W-2 employee of the vendor as of September 13, 2021.
11. The claimant's business was negatively impacted by COVID-19 between March 2020 and August 2021.

Credibility Assessment:

The claimant's credible testimony and documents, including the vendor's November 24, 2021, letter, show that her business was impacted by the pandemic. Specifically, the claimant credibly testified that all of her business income was earned during the first three months of 2020 and all school contracts ended in March 2020 due to the COVID19 pandemic.

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 need not consider whether the claimant established that she met the statutory definition for PUA eligibility, because the DUA's underlying determination was improperly issued under G.L. c. 151A, § 71.

Upon the filing of a claim, the Massachusetts unemployment statute requires that the DUA determine whether or not the claim is valid.¹ The DUA will authorize the payment of PUA benefits upon a minimum showing the claimant was a covered individual who was out of work for a qualifying reason under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act).²

The unemployment statute also imposes time limits on the DUA's authority to redetermine eligibility for benefits. G.L. c. 151A, § 71, provides, in relevant part, as follows:

The commissioner may reconsider a determination whenever he finds that (1) an error has occurred in connection therewith; or (2) wages of the claimant pertinent to such determination but not considered in connection therewith have been newly discovered; or (3) benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentation of fact; provided, however, that with respect to (1) and (2) *no such redetermination shall be made after one year from the date of the original determination*; and provided, further, that with respect to (3) no such redetermination shall be made after four years from the date of the original determination. . . .

(Emphasis added.)

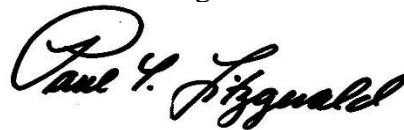
The DUA's electronic record-keeping system, FAST UI, shows that the DUA issued its first PUA benefit payment to the claimant on April 23, 2020. By issuing this payment, the DUA is deemed to have determined that the claimant met the above CARES Act requirements. This means that the DUA's June 8, 2021, Notice was actually a redetermination. Since nothing in the record or in the FAST UI system indicates that those benefits were paid based upon a misrepresentation of fact, the DUA had one year within which it could redetermine her eligibility for benefits. Here, the DUA's redetermination disqualifying her was issued more than a year later. Pursuant to G.L. c. 151A, § 71, the agency did not have authority to do so.

We, therefore, conclude as a matter of law that the DUA's June 8, 2021, Notice was time-barred under G.L. c. 151A, § 71.

¹ G.L. c. 151A, § 39(a).

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

The review examiner's decision is reversed. The claimant is eligible for PUA benefits as of the week beginning March 15, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 10, 2023



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

BGM/rh