

The claimant established that she her dog walking services in Massachusetts were significantly reduced during 2020 due to the COVID-19 public health emergency. She is entitled to PUA benefits.

**Board of Review
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Issue ID: N6-H85M-82TH

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, which was denied in a determination issued on June 14, 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 in a decision rendered on December 16, 2021. We accepted the claimant's application for review.

The review examiner concluded that the claimant was ineligible for PUA benefits on the basis that the claimant failed to present substantial evidence to verify self-employment that was negatively affected due to the COVID-19 pandemic. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded for additional evidence for the review examiner to consider the documents submitted with the claimant's Board appeal. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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 under a Massachusetts claim because she failed to prove that she was a self-employed dog walker whose work was negatively affected due to the COVID-19 public health emergency, is supported by substantial and credible evidence and is free from error of law.

Consolidated 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 Pandemic Unemployment Assistance (PUA) with an effective date of March 15, 2020. Her weekly benefit amount is \$267.

2. The claimant was living in Massachusetts in 2019 and 2020.
3. In late February 2019, the claimant began working as a self-employed dog walker. She used an app to find customers and receive payments.
4. The app allowed the claimant to set a geographic area where she was available. She worked an area limited to a one-mile radius from her home. While she had the opportunity to set a limit on the number of jobs she would take within certain time periods, she did not limit her availability.
5. The claimant continued working as a self-employed dog walker in Massachusetts throughout the rest of 2019 and into 2020.
6. In March 2020, when the COVID-19 pandemic started, the claimant was unable to continue working as a dog walker. Many of her customers were working from home and no longer needed her services. Many customers were not comfortable having her come to their houses. The claimant also was not comfortable entering other houses and having the contact required to perform this work.
7. The claimant did have four customers in 2020 between March and August. In August 2020, she stopped working as a dog walker. At that time, the claimant returned to her prior occupation as a software developer.
8. The dog walking app allowed the claimant to be paid through the PayPal app. The claimant did not have a PayPal account. She used her husband's PayPal account as a convenience. As a result, a 1099K issued by PayPal for 2019 reflected payments to both the claimant and her husband. Her husband's income was minimal as he used the app only for occasional online sales of personal property.
9. The 2019 1099K reflects income to the claimant in the amount of \$4,567 and income to her husband of \$259.59.
10. The PayPal and Rover records are authentic and accurately reflect the work the claimant performed in 2019 and 2020 and the payments received for that work.
11. On June 14, 2021, the Department of Unemployment Assistance sent the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive PUA benefits beginning the week ending February 8, 2020.
12. The claimant appealed that Determination.

Credibility Assessment:

The claimant provided clear and detailed answers to questions. Her testimony was consistent with the documents provided. It is concluded that her testimony was credible and the documents submitted are authentic.

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 the Coronavirus Aid, Relief, and Economic Security (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 established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is that individuals will be eligible for PUA benefits if they were self-employed and experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency.² 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.³ Therefore, in order to be eligible for benefits, the claimant must show that she had work in Massachusetts that was negatively impacted by the COVID-19 pandemic.

In her decision, the review examiner concluded that the claimant was not eligible for PUA benefits because she did not present sufficient evidence of self-employment as a dog walker and a diminution of earnings due to COVID-19. The claimant produced with her Board appeal a detailed explanation of her documents, a PayPal transaction history from January 1, 2019, through December 31, 2020, a PayPal profile identifying her, Rover Customer messages/receipts to the claimant and her "Rover Profile."

After remand, the review examiner has found that the claimant was working in 2019 and the early portion of 2020 within Massachusetts as a self-employed dog walker. *See* Consolidated Findings ## 2 and 5. She found that the claimant had income of \$4,567.00 in 2019 from that business. *See* Consolidated Finding of Fact # 9. The review examiner further found that the PayPal and Rover records produced with the Board appeal were authentic and accurately reflected the work the claimant performed in 2019 and 2020 and the payments received for that work. *See* Consolidated Finding # 10. The claimant testified that her self-employed dog walker earnings were \$4,826.59 in 2019 but decreased from March through May to zero due to the loss of demand resulting from

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

² *See* U.S. Department of Labor (DOL) Unemployment Insurance Program Letter (UIPL) 16-20 Change 6 (Sept. 3, 2021), Attachment I, pp. I3-I4.

³ *See* UIPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B (7), p. I-3.

her clients remaining home due to the pandemic.⁴ Additionally, the review examiner found that in March, 2020, when the COVID-19 pandemic started, the claimant was unable to continue working as a dog walker. *See* Consolidated Finding # 6. These consolidated findings now show that the claimant was working as a self-employed dog walker who experienced a significant diminution of work due to the COVID-19 public health emergency.

Consolidated Finding # 7 provides that the claimant voluntarily stopped performing her dog walking services in August, 2020 to return to her prior work as a software developer. Specifically, the record shows that her dog walking business ended on August 13, 2020. *See* Remand Exhibit # 22.⁵ This means that the COVID-19 public health emergency was no longer causing a significant diminution of her dog walking services as of August 13, 2020.

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 in Massachusetts for a COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

The review examiner's decision is reversed. The claimant is eligible for PUA benefits as of the week ending March 21, 2020, and through to August 15, 2020, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 24, 2023



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

⁴ 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).

⁵ Remand Exhibit # 22 includes a Rover receipt showing that the dog walking business ended on this date. This exhibit 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.

BGM/rh