

The DUA's determination that the claimant had not been in unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), was issued more than a year after his first PUA payment. Since there is no evidence of any misrepresentation, the disqualification is time-barred pursuant to G.L. c. 151A, § 71.

**Board of Review
19 Staniford St., 4th 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-H8DJ-9DV7

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 February 2, 2020, which was initially approved. However, on July 12, 2021, the DUA determined that the claimant was not entitled to benefits. The claimant appealed the determination to the DUA hearings department. Following a hearing, the review examiner affirmed the determination in a decision rendered on August 24, 2021, concluding that the claimant had failed to establish that he had been in total or partial unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), and thus, he was not eligible for PUA benefits. We accepted the claimant's application for review and remanded the case to obtain additional testimony and documentary evidence pertaining to the claimant's primary work in real estate. After conducting a remand hearing, the review examiner issued his consolidated findings of fact.

Ruling of the Board

In rendering our decision, we have reviewed the recorded testimony and evidence from the original and remand hearings, the claimant's appeal, the review examiner's decision and consolidated findings of fact, as well as the DUA's electronic record-keeping system (FAST UI). We need not consider whether the claimant established that he met the statutory definition of partial or total unemployment, 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 CARES Act,² and, *inter alia*, that the individual was in unemployment

¹ G.L. c. 151A, § 39(a).

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

within the meaning of state law.³ Benefits are to be paid promptly, or denied, in accordance with its determination.⁴

Since the agency is prohibited by law from paying benefits without first determining that the claimant met the total or partial unemployment provisions of state law, and the DUA's FAST UI system shows that the claimant was, in fact, paid benefits on this claim in a payment issued on May 15, 2020, we conclude that the DUA had, at that point, determined that the claimant was in total or partial unemployment pursuant to G.L. c. 151A, §§ 29 and 1(r).

This means that the DUA's July 12, 2021, determination was actually a redetermination. Pursuant to the time limitations set forth under G.L. c. 151A, § 71, the DUA may not issue a redetermination on a claim more than one year from the date of the original determination unless there is misrepresentation of fact. Because the DUA is deemed to have originally determined the claimant to have been eligible on May 15, 2020, the agency's July 12, 2021, redetermination was issued more than one year from the date of the original determination. There is nothing in the record or FAST UI to indicate misrepresentation.

We, therefore, conclude as a matter of law that the DUA's July 12, 2021, Notice of Disqualification was time-barred under G.L. c. 151A, § 71.

The review examiner's decision is reversed. The claimant is entitled to the benefits he received under her PUA claim if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 20, 2022



Paul T. Fitzgerald, Esq.
Chairman



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.

³ See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(7)(a), p. I-9.

⁴ G.L. c. 151A, § 39(a).

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