

The claimant was self-employed as a photographer in Massachusetts until clients canceled events and photoshoots because of the COVID-19 public health emergency. The claimant has established that she was unemployed for a reason listed under the CARES Act and she is eligible for PUA benefits.

**Board of Review
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Issue ID: N6-H8M2-6DM5

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 March 8, 2020, which was denied in a determination issued on July 7, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed in part and reversed in part the agency's initial determination, awarding the claimant PUA benefits from March 8, 2020, through June 4, 2020, but denying the claimant PUA benefits thereafter in a decision rendered on November 9, 2021. We accepted the claimant's application for review.

Benefits were denied for the period beginning June 5, 2020, 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 obtain additional information about the claimant's employment in 2020. 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 presented sufficient evidence to show that her work was impacted by the COVID-19 public health emergency through June 4, 2020, but did not present sufficient evidence to show that her work continued to be impacted by the pandemic thereafter, 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 Pandemic Unemployment Assistance (PUA) which was determined to be effective March 8, 2020, with a weekly benefit amount of \$267.
2. The claimant is a Massachusetts resident.
3. The claimant has been a part-time self-employed photographer since 2017.
4. The claimant's gross income in 2019 was \$13,625, and net income was \$-10,798.
5. The claimant's gross income in 2020 was \$24,756, and net income was \$-15,824.
6. The claimant would schedule photography sessions in advance.
7. The claimant's scheduled photoshoots from March 2020, through June 2020, were canceled by the customers due to the COVID-19 pandemic.
8. The claimant's scheduled bar mitzvah photography session scheduled for September 26, 2020, was canceled due to the COVID-19 pandemic. The claimant was not re-hired to perform the photography services for the bar mitzvah upon it potentially taking place.
9. The claimant had several other photography sessions scheduled after July 4, 2020, and in 2021, that were canceled due to the COVID-19 pandemic.
10. The claimant was unable to provide exact dates of her 2020 and 2021 scheduled photography sessions that were canceled due to the COVID-19 pandemic, as she deleted the events from her calendar.
11. The claimant began part-time employment with a Massachusetts tree company at the end of December 2020. The claimant did not consistently provide her correct employment status and gross income earned each week when filing for Massachusetts PUA benefits upon commencement of employment with the Massachusetts tree company at the end of December 2020.

Credibility Assessment:

The claimant provided forthcoming and detailed testimony throughout the remand hearing. In support of her testimony, the claimant submitted ample documentation in the form of online payment application statements, bank statements, tax documentation, business ledgers, her personal calendar, and correspondence with clients. Based on the totality of the claimant's testimony and evidence provided, it is concluded the claimant's testimony and supporting corroborating documentation is credible.

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 disagree with the review examiner's legal conclusion that the claimant did not meet her burden to show that she was impacted by the COVID-19 pandemic after July 4, 2020.

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.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 an individual will be eligible for PUA benefits if he or she 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." 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.² 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.

During both hearings, the claimant testified that she lost several business opportunities as a direct result of the COVID-19 pandemic. The review examiner accepted this testimony as credible based on business records showing that the claimant had several photography sessions scheduled from March 2020 into 2021 that were subsequently canceled due to the COVID-19 pandemic. *See Consolidated Findings ## 7–9*. 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). Upon review of the record, we see no reason to disturb the review examiner's credibility assessment.

The claimant was self-employed as a photographer in Massachusetts. Consolidated Finding # 3. Beginning in March of 2020, and through the beginning of 2021, many of the claimant's clients began cancelling their events and photo shoots because of the COVID-19 pandemic. Consolidated Findings ## 7–9.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that the COVID-19 public health emergency severely limited her ability to perform her customary work

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

² *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL)16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

activities and she was therefore in unemployment within the meaning of 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 for the week beginning March 8, 2020, and for subsequent weeks if otherwise eligible.

N.B.: The record indicates that the claimant had some part time earnings in beginning in December, 2020, that may have impacted her eligibility for benefits. For this reason, we are asking the agency to investigate the claimant's unemployment status as of December 6, 2020, under the provisions of G.L. c. 151A, §§ 29 and 1(r).

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 24, 2022



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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

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