

The claimant was incarcerated from May 20, 2021 to July 8, 2021, and therefore not available for work during this period. However, after being released, he was able, available for, and actively seeking work. At this time, he became eligible for PUA benefits.

**Board of Review
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Issue ID: N6-H8VP-8833

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 15, 2020. In a determination issued on July 9, 2021, the DUA denied the claimant benefits as of the week beginning June 13, 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 November 23, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to show that he was capable of and available for work during the period on appeal, and, thus, the claimant was disqualified under G.L. c. 151A, § 24(b). 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 evidence about the claimant's eligibility for benefits. 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 was not entitled to PUA benefits from the week of June 13, 2021, and indefinitely thereafter because he was incarcerated, 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) benefits with an effective date of March 15, 2020. His Weekly Benefit Amount is \$267.

2. On July 9, 2021, the Department of Unemployment Assistance (DUA) issued a Notice of Non-Monetary Issue Determination – Incarceration to the claimant, stating that he was not eligible for PUA benefits beginning the week ending June 19, 2021.
3. The claimant was incarcerated from May 20, 2021, until his release on July 8, 2021.
4. Since his release from jail, the claimant has had no restrictions or limitations that interfered with either his ability or his availability to work if employment were offered.
5. In January 2022, the claimant started working at a ski area. He worked there until March 10, 2022.

Credibility Assessment:

At the remand hearing, the claimant credibly testified that he was incarcerated from May 20, 2021 until July 8, 2021. In support of his testimony, the claimant submitted an official looking document—with proper letterhead and seal—signed by a captain of the [County] Sheriff’s Office, confirming his dates of incarceration. The claimant readily admitted that his testimony during the initial hearing, that he was released on July 9, 2021, was an error. Furthermore, the claimant credibly testified that, since his release, nothing has interfered with his ability to work. This is bolstered by the fact that the claimant returned to work in January 2022. Therefore, it is concluded the claimant has remained able and available to work since his release from jail.

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 was not available for work beginning June 13, 2021.

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 he is available for work within the meaning of state law.²

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

² CARES Act, § 2102(a)(3)(A)(ii)(I).

The review examiner initially denied benefits after concluding the claimant had not established that he was available for work. In reaching this conclusion, the review examiner applied the state law provision under G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall . . . (b)
Be capable of, available, and actively seeking work in his usual occupation or any
other occupation for which he is reasonably fitted

The review examiner concluded that the claimant was not entitled to benefits under G.L. c. 151A, § 24(b), because he was not available for work following his incarceration on June 19, 2021. On remand, the claimant presented documentation showing that he was only incarcerated for the period between May 20, 2021, and July 8, 2021. Consolidated Finding # 3. He cannot have been capable of or available for work while incarcerated during this period. However, after being released from incarceration on July 8th, the claimant did not have any restrictions or limitations that interfered with his availability for work. Consolidated Finding # 4. Additionally, the claimant testified that he has continually been searching for work since his release from incarceration.³ As such, the record shows that the claimant met the eligibility requirements under G.L. c. 151A, § 24(b) as of the week beginning July 11, 2021.

We, therefore, conclude as a matter of law that the claimant was not capable of and available for work within the meaning of G.L. c. 151A, § 24(b), during the period between May 16, 2021, and July 10, 2021. We further conclude that the claimant was capable of, available for, and actively seeking work as of the week beginning July 11, 2021.

The review examiner's decision is affirmed in part and reversed in part. The claimant is not entitled to receive PUA benefits from the week of May 16, 2021, through July 10, 2021. The claimant is entitled to receive PUA benefits for the week beginning July 11, 2021, and for subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 19, 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

³ The claimant's testimony in this regard, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. 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).

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