

The claimant established that her translation services in Massachusetts were significantly reduced in 2021 due to the COVID-19 public health emergency. She is entitled to PUA benefits.

**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-HFMR-NFTL

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 January 3, 2021. The Department of Unemployment Assistance (DUA) determined that the claimant was ineligible for PUA benefits on October 26, 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 March 15, 2022. 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 a significant diminution of earnings 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 in order 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 her translation services were significantly reduced 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 January 3, 2021.

2. The Department of Unemployment Assistance (DUA) determined the claimant's weekly benefit amount to be \$267.
3. In 2019, the claimant was living and working in Japan. She worked as a freelance Japanese-English translator.
4. As a freelance translator, the claimant received different translation assignments from different Japanese translation companies and agencies.
5. In January 2020, the claimant moved back to Massachusetts. When she moved to Massachusetts, the claimant continued working remotely as a freelance translator for companies in Japan.
6. The claimant worked as a freelance Japanese-English translator in Massachusetts in 2020 and in 2021.
7. Since the early 2000's, the claimant worked for translation companies that dealt with government compilations on behalf of the Japanese government.
8. In 2020, because of the COVID-19 public health emergency, the Japanese government underwent budget cuts. Because of the budget cuts, the translation companies that did the government's compilation work were not contracted for work by the government. Therefore, these companies had minimal work available for the claimant starting in 2020 and continuing into 2021.
9. Beginning on or around 2000, the claimant worked with translation companies that translated materials in the Japanese tourism industry. These companies, among other things, translated tourism pamphlets for tourists.
10. In 2020, when the COVID-19 public health emergency was declared, few tourists were visiting Japan.
11. Since few tourists were visiting Japan during the pandemic, the translation companies that translated materials for tourists had no work. Therefore, these companies did not have work available for the claimant starting in 2020 and continuing into 2021.
12. Since 2006, the claimant did translation work for an advertising agency.
13. When the COVID-19 public health emergency was declared, the advertising agency no longer had work available for the claimant in 2020 and in 2021.
14. In 2020, the claimant made a gross income of \$27,562 and a net profit of \$17,658 from her freelance translation work.

15. In 2021, the claimant made a gross income of \$23,533 and a net profit of \$12,555 from her freelance translation work.
16. The claimant made \$4,029 less in gross income in 2021 than she did in 2020.
17. The claimant made \$5,103 less in net profit in 2021 than she did in 2020.
18. Throughout 2021, the claimant's work was significantly reduced because the companies she worked for had limited to no assignments for her to do.

Credibility Assessment:

The claimant offered forthcoming detailed testimony regarding her freelance translation work. She provided sufficient corroborating documentation showing that her employment was negatively affected by COVID-19, *i.e.*, she submitted letters of support from the different translation companies and agencies she worked for, she submitted bank account statements showing reduced credits to her account, and she submitted 2020 and 2021 federal tax returns showing that she made less in 2021 than she did in 2020. She credibly testified in detail about the type of work she did for each company, when she began working for these companies, and how each company was affected by COVID-19. All the letters submitted from the different companies she worked for are credited as credible and authentic because the claimant offered detailed forthcoming testimony about each of them, and because she submitted bank account details showing credits from these companies.

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

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

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 a diminution of earnings due to COVID-19. The claimant produced with her Board appeal multiple letters from clients regarding the pandemic causing them to decrease their use of the claimant's services. After considering these documents on remand, the review examiner has found that: (1) the claimant moved back to Massachusetts in January, 2020, continuing work as a remote freelance translator for companies in Japan; (2) the 2020 COVID-19 pandemic caused Japanese government budget cuts which resulted in minimal work available for the claimant starting in 2020 and continuing into 2021; (3) the 2020 COVID-19 pandemic decimated Japan's tourist industry; (4) since few tourists were visiting Japan during the pandemic, the translation companies that translated materials for that industry had no work and this resulted in a loss of business for the claimant starting in 2020 and continuing into 2021; (5) when the COVID-19 public health emergency was declared, the advertising agency no longer had work available for the claimant in 2020 and in 2021; (6) in 2020, the claimant made a gross income of \$27,562 and a net profit of \$17,658; (7) in 2021, the claimant made a gross income of \$23,533 and a net profit of \$12,555; (8) the claimant made \$4,029 less in gross income in 2021 than she did in 2020; (9) the claimant made \$5,103 less in net profit in 2021 than she did in 2020; and (10) throughout 2021, the claimant's work was significantly reduced because the companies she worked for had limited to no assignments for her to do. *See Consolidated Findings of Fact ## 5 through 18.*

Indeed, the consolidated findings show that the claimant's net earnings decreased 29% from 2020 to 2021. This demonstrates that the claimant experienced a significant diminution of work due to the COVID-19 public health emergency.

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 beginning January 3, 2021, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 15, 2022

² See U.S. Department of Labor (DOL) Unemployment Insurance Program Letter (UIPL) 16-20 Change 6 (Sept. 3, 2021), Attachment I, pp. I-3-I-4.

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



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

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