

**The claimant established that she had a scheduled job offer to begin on March 30, 2020, that was withdrawn when the employer’s business was adversely affected due to the COVID-19 public health emergency. She is entitled to PUA benefits.**

**Board of Review  
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Chairman  
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Member  
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**Issue ID: N6-HHH5-7P27**

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 28, 2021. The Department of Unemployment Assistance (DUA) determined the claimant was ineligible for PUA benefits on November 3, 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 February 24, 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 sufficient evidence to verify that she lost work for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. After considering the recorded testimony and evidence from the hearing, the review examiner’s decision, and the claimant’s appeal, we remanded the case for additional evidence in order for the review examiner to consider two letters from a purported employer. The claimant attended the remand hearing. 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 because she was out of work only due to a general fear of COVID-19, 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. As of March 2020, the claimant had no history of full-time work.
2. The claimant worked for a furniture store in the distant past.

3. In March 2020, the claimant asked the owner of the furniture store if he had any job openings.
4. During the course of this conversation, the claimant suggested the owner hire her to start a manufacturing sales position, and he agreed.
5. The claimant was offered a full-time position with the furniture company as a manufacturer's representative/salesperson, earning 5% commission on her sales and a schedule of Monday through Friday from 9:30 a.m. to 5:30 p.m.
6. The claimant and the owner initially agreed that she would start working on March 30, 2020, but this was pushed back by the claimant due to the pandemic.
7. Sometime later in the spring of 2020, the claimant met with the owner in-person, and he told her that revenue was down because of the pandemic, and he was going to hold off on starting the new manufacturing position that was offered to the claimant.
8. The owner rescinded the claimant's offer of employment due to the COVID-19 pandemic.

#### Credibility Assessment:

The claimant produced a March 10, 2022, notarized letter from the employer ("Letter 2"). This document is authentic and credible evidence. The claimant's explanation of how this letter came to be was reasonable and convincing, in light of the consistent and detailed explanations the claimant gave initially for the offer letter ("Letter 1") as well as Letter 2 from the employer. Letter 1 was written in a format through Word, with a simple heading, and no graphics, and was hand-signed. The owner's name was spelled with two 'd' letters but was signed with only one. The claimant's later explanation was plausible: she explained that the owner is elderly, not good with computers, and probably had an assistant type it, which clarifies the lack of professional letterhead and the misspelling of the owner's name. Additionally, the claimant testified that she met with the owner and the notary public, whom she knows from prior professional interactions, so the owner could have Letter 1 notarized. The claimant testified that she observed the notarization process for Letter 1, and the owner provided the notary public with his license. The claimant produced Letter 2 from the owner with the same signature, a correct spelling of the owner's name and a second seal from the same notary public dated on March 10, 2022. The claimant testified that she had asked the owner to write a second letter describing why he had to rescind the job offer, and that Letter 2 is what she received. She stated that she was not present when Letter 2 was notarized, which bolsters the authenticity of both letters because it takes the claimant out of the picture. Taken together, with the plausible explanations, Letter 1 and Letter 2 are internally consistent and are deemed authentic and credible evidence.

The claimant had a job offer from the owner of the furniture company in March 2020 which was rescinded by the owner due to the COVID-19 pandemic. The claimant gave conflicting testimony about how and why she did not initially begin her employment with the furniture company. However, the claimant testified that she specifically remembered the occasion that she was told by the owner that he was going to hold off on her employment because she remembers feeling devastated that after all the times of waiting it had slipped through her fingers. This clarified testimony is credible based on the claimant's emotional testimony, and the claimant's testimony about the reason the job offer was rescinded is corroborated by Letter 2 that was hand-signed by the owner and notarized.

### 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.<sup>1</sup> 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)(gg) of the CARES Act is that individuals will be eligible for PUA benefits if they had scheduled employment lost for a listed COVID reason.<sup>2</sup> Therefore, in order to be eligible for benefits, the claimant must show that she had scheduled employment negatively impacted by the COVID-19 pandemic.

In her decision, the review examiner concluded that the claimant was ineligible for benefits as of February 8, 2020, because she decided to reject the job offer due to having a general fear of contracting the COVID-19 virus. However, during the hearing, the claimant asserted that she had scheduled employment to begin on March 30, 2020, which was rescinded by the employer because the COVID-19 public health emergency had negatively affected his business. She had also produced two letters from the employer in support of this assertion which were not addressed in the decision.

After remand, the review examiner has found as follows. (1) The claimant was offered a full-time position with the furniture company as a manufacturer's representative/salesperson, earning 5%

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>2</sup> 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.

commission on her sales and a schedule of Monday through Friday from 9:30 a.m. to 5:30 p.m. (2) The claimant and the owner initially agreed that she would start working on March 30, 2020, but this was pushed back by the claimant due to the pandemic. (3) Sometime later in the spring of 2020, the claimant met with the owner in-person and he told her that revenue was down because of the pandemic, and he was going to hold off on starting the new manufacturing position that was offered to the claimant. (4) The owner rescinded the claimant's offer of employment due to the COVID-19 pandemic. *See Consolidated Findings ## 5 through 8.* These consolidated findings show that the claimant had scheduled employment during 2020 which was rescinded 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 lost work for a COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(gg) of the CARES Act.

The review examiner's decision is reversed in part and affirmed in part. The claimant is denied benefits from February 2, 2020, through March 28, 2020. The claimant is eligible for PUA benefits as of the week beginning March 29, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 6, 2022**

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](http://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