

The claimant, a self-employed carpenter, was deemed ineligible for PUA benefits in a determination issued on November 16, 2021, pursuant to G.L. c. 151A, §§ 29 and 1(r). However, the determination was issued 18 months after the claimant received his first payment of benefits. Since the determination was issued more than one year after claimant's first PUA payment and there is no evidence of misrepresentation, the disqualification is time-barred pursuant to G.L. c. 151A, § 71.

**Board of Review
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Issue ID: N6-HHNT-J2NP

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 March 29, 2020, which was initially approved. However, in a determination issued on November 16, 2021, he was disqualified from receiving any PUA benefits. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's initial determination and granted ten weeks of PUA benefits in a decision rendered on April 4, 2022. We accepted the claimant's application for review.

The remaining weekly benefits were denied after the review examiner determined that the claimant was not in unemployment and, thus, the claimant was not eligible for PUA benefits under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and G.L. c. 151A, §§ 29 and 1(r). 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 review the record and provide subsidiary findings about whether the claimant was in total or partial unemployment for any week in 2021. 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 in total unemployment for ten weeks in 2020, and that, for all other remaining weeks, the claimant was not in either total or partial unemployment and, therefore, not entitled to receive benefits, 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 29, 2020.
2. The Department of Unemployment Assistance (DUA) determined the claimant's weekly benefit amount to be \$823.
3. The claimant was self-employed as a carpenter in the home remodeling business in Massachusetts in 2019 and 2020.
4. The claimant has a 2019 [Form] 1040 with a Schedule C reflecting gross income of \$439,860 and a net income of \$86,071, after expenses.
5. The claimant has a 2020 [Form] 1040 with a Schedule C reflecting gross income of \$404,781, and net income of \$119,873, after expenses.
6. The claimant, because of the nature of his job as a remodeling contractor, can go for several weeks without earning an income. Each payment to the claimant from a client is typically a result of a project done over a long period of time as opposed to just a few days.
7. The claimant worked on several building projects for his clients spread out over several weeks and months. The claimant maintains detailed books, records, and profit and loss formulas that document his business activities the weeks he certified his claims.
8. As a result of the COVID-19 pandemic in 2020, the claimant did not work for the following ten weeks: Week ending April 4, 2020; week ending April 11, 2020; week ending April 18, 2020; week ending April 25, 2020; week ending May 30, 2020; week ending June 13, 2020; week ending July 18, 2020; week ending July 25, 2020; week ending October 3, 2020; and the week ending October 10, 2020. The claimant had no physical restrictions on his ability or availability to work a full-time schedule during these weeks.
9. The claimant was on vacation during the weeks ending August 22, 2020, January 2, 2021, and February 27, 2021.
10. As a result of the COVID-19 pandemic in 2021, the claimant had no work the weeks ending January 30, 2021 and February 6, 2021. The claimant had no physical restrictions on his ability or availability to work a full-time schedule during these weeks.
11. At all other relevant times before March 20, 2021, the claimant's part time and full-time net earnings exceeded \$1,097.
12. On November 16, 2021, the DUA issued a Notice of Non-Monetary Issue Determination - Full Time Employment, stating that the claimant did not meet the PUA eligibility requirements beginning the week ending February 8, 2020.

Credibility Assessment:

The claimant provided credible testimony and documentation that he did not perform any services for any clients, did not receive any remuneration, and was able and available for work during the twelve weeks referenced in findings 8 and 10 above.

The claimant provided credible testimony concerning his general method of operation relating to his carpentry business. He explained in general terms what weeks he did work that eventually generated him income and what weeks he did not do any income-yielding work at all. He spoke about billing his clients when their projects were completed. He acknowledged that client billings were the result of work done across several weeks or months. In this case, the claimant submitted detailed credible documentation showing the weeks he was partially or fully employed. Furthermore, although the claimant did not receive any income for multiple weeks since his claim effective date, he admitted that such is the nature of his carpentry business, and that it is not unusual for him to go without receiving a payment from a client for several weeks at a time. He submitted detailed credible documentation of income received and hours billed for all projects engaged in during the relevant period. This included four complex formulas calculating how he arrived at all income figures.

The claimant credibly testified that the income he earned is a result of work spread across many weeks. The claimant grossed \$404,781, and netted income of \$119,873 in 2020. The claimant submitted detailed records to support precisely what and when he worked during the period at issue. While concededly, no week's work is the same as the other, this income \$119,873, if spread across the 28 weeks claimed (39 total weeks less 10 weeks of total unemployment, less one vacation week) in 2020, is equal to around \$4,281 of income per week. Similarly, as of the week ending March 20, 2021, the claimant reported having made more than \$1,097.33 for ten weeks he claimed in 2021.

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 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 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 2, 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 November 16, 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 2, 2020, the agency's November 16, 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 November 16, 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 his PUA claim if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 31, 2023



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

¹ G.L. c. 151A, § 39(a).

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

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).

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.

DY/rh