

Board of Review
100 Cambridge Street, Suite 400
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-HHP8-78V8

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 May 17, 2020, and was initially approved. However, the agency issued a determination on December 3, 2021, which disqualified the claimant from receiving those benefits. 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 28, 2022, concluding that the claimant had failed to establish that he was unemployed for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020¹, and, thus, the claimant was not eligible for PUA benefits. We accepted the claimant's application for review.

Ruling of the Board

In rendering our decision, we have reviewed the recorded testimony and evidence from the hearing, the claimant's appeal, the review examiner's decision and the DUA's electronic record-keeping system (FAST UI). We need not consider whether the claimant lost work due to a listed reason related to the COVID-19 public health emergency, as required by the CARES Act, 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.² The DUA will authorize the payment of PUA benefits upon a minimum showing that the claimant was a covered individual who was out of work for a qualifying reason under the CARES Act, and benefits are to be paid promptly, or denied, in accordance with its determination.³

Since the agency is prohibited by law from paying benefits without first determining that the claimant had a listed COVID-19 qualifying reason for losing work, and the DUA's FAST UI system shows that the claimant was, in fact, initially paid benefits on this claim in a payment issued on May 18, 2020, we conclude that the DUA had, at that point, determined that the claimant lost work for a qualifying reason under the CARES Act.

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

² G.L. c. 151A, § 39(a).

³ G.L. c. 151A, § 39(a).

This means that the DUA's December 3, 2021, determination was 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 18, 2020, the agency's December 3, 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 December 3, 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 - August 11, 2023



Paul T. Fitzgerald, Esq.
Chairman



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.

MM/rh