

**Board affirmed the ruling on a potential claim eligibility issue, where the review examiner concluded that the claimant did not have an active or potential claim for regular unemployment benefits in another state that would preclude him from receiving PUA benefits in Massachusetts. Further, Board reversed the denial of PUA benefits due to not losing work for a listed COVID-19 related reason, as the review examiner did not have the authority to consider a separate eligibility issue.**

**Board of Review  
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Chairman  
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Member  
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Member**

**Issue ID: N6-HHV2-MRVH**

### 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 April 5, 2020, which was initially approved. However, in a determination issued on January 11, 2022, the DUA denied benefits beginning the week ending January 2, 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 May 10, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that, even though the claimant had shown that he did not qualify for regular unemployment benefits in another state, he was not eligible for Massachusetts PUA benefits because he did not have employment or planned commencement of employment in Massachusetts that was impacted by the COVID-19 pandemic. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, and the DUA's electronic record-keeping systems, FastUI and UI Online.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not have an active or potential unemployment claim in another state but was disqualified on other grounds, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

The review examiner's 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 April 5, 2020, with a weekly benefit amount of \$268.
2. The claimant certified for weekly Massachusetts PUA benefits from week ending April 11, 2020, through the week ending May 16, 2020, and the week ending August 22, 2020, through the week ending June 5, 2021.
3. The claimant did not certify for weekly Massachusetts PUA benefits the week ending May 23, 2020, through the week ending August 15, 2020, and the week ending June 12, 2021, through the week ending September 4, 2021.
4. The claimant is a Massachusetts resident.
5. The claimant was a full-time sales associate for a Massachusetts plumbing company until September 2019, when he separated from his employment due to a change in his expected hours of employment.
6. The [claimant] had an accepted regular Massachusetts unemployment [claim] with an effective claim date of September 15, 2019, and the [claimant] became eligible for extended benefits from April 5, 2020, through September 4, 2021.
7. The claimant did not have Massachusetts employment or an offer of employment in Massachusetts since September 2019.
8. The Interstate Connection Network (ICON) results indicate Rhode Island wages under the claimant's Social Security number in 2020 Quarter 3 and 2021 Quarters 1, 2, and 3, for a total of \$6,493.36.
9. The claimant began temporary part-time employment as a crossing-guard in a town in Rhode Island in October 2019, and transitioned to non-temporary part-time employment in September 2021.
10. The claimant filed a claim for Rhode Island regular unemployment with an effective claim date of June 20, 2021, but the claim was deemed monetarily ineligible due to not earning enough wages in the base period of 2020 Quarter 1, through 2021 Quarter 1.

[Credibility Assessment:]<sup>1</sup>

In this case, the claimant provided credible and consistent testimony that he separated from his full-time sales associate position with a Massachusetts plumbing company in September 2019, due to a change in his expected hours of employment, and that he applied and was approved for Massachusetts regular unemployment

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<sup>1</sup> We have copied and pasted here the review examiner's credibility assessment, which appears in the conclusions and reasoning section of his decision.

benefits and extension benefits. The claimant further testified that he began temporary part-time employment as a crossing guard with a Rhode Island town and transitioned to non-temporary status in September 2021. The claimant asserted his Rhode Island employment was impacted by the COVID-19 pandemic when school was no longer in session as his services were not requested. The claimant confirmed he filed a claim for Rhode regular unemployment with an effective claim date of June 20, 2021, but was denied because the claim was deemed monetarily ineligible due to not enough wages in the base period of 2020 Quarter 1, through 2021 Quarter 1. Lastly, the claimant confirmed that since September 2019, he has not been employed in Massachusetts and has not had an offer of employment in Massachusetts.

In support of his testimony, the claimant provided Rhode Island Department of Labor and Training documentation confirming his Rhode Island regular unemployment claim was deemed monetarily ineligible due to not earning enough wages in the base period of 2020 Quarter 1, through 2021 Quarter 1.

### 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 findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject Finding of Fact # 6 insofar as it states that the claimant became eligible for extended benefits from April 5, 2020, through September 4, 2021. UI Online shows that the claimant was found eligible for pandemic emergency unemployment compensation (PEUC) for this period, and that the claimant exhausted his PEUC benefits as of the week ending August 15, 2020. In adopting the remaining findings, we deem 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 to deny PUA benefits.

The claimant in this case seeks PUA benefits, an 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>2</sup> In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act. Under § 2102(a)(3)(A)(i) of the CARES Act, a covered individual is one who "is not eligible for regular compensation or extended benefits under State or Federal law or [PEUC] . . . , including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or [PEUC] . . . ." Claimants are not eligible to receive PUA benefits in Massachusetts if they are eligible to receive unemployment benefits in another state.<sup>3</sup>

In this case, the review examiner found that the claimant worked part-time and earned wages in Rhode Island but was determined to be monetarily ineligible for regular unemployment benefits

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<sup>2</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>3</sup> See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sep. 3, 2021), 4(c), p. 8.

in Rhode Island when he applied. *See* Findings of Fact ## 8–10. Furthermore, although it was not addressed in the review examiner’s decision, we note that the claimant exhausted his Massachusetts PEUC benefits prior to the week ending January 2, 2021. This means that, as of the week ending January 2, 2021, he was not potentially eligible for regular, extended, or PEUC benefits, and he met the requirements of § 2102(a)(3)(A)(i) of the CARES Act.

Nonetheless, the review examiner concluded that the claimant was not eligible for PUA in Massachusetts because he did not have Massachusetts employment that had been impacted by the COVID-19 pandemic. It is true that claimants must file for PUA benefits in the state in which they were working at the time they became unemployed due to a COVID-19 related reason listed in § 2102(a)(3)(A)(ii)(I)(aa)–(kk) of the CARES Act.<sup>4</sup> However, this was not the basis of the disqualifying determination that the claimant appealed.

Pursuant to G.L. c. 151A, § 39(b), the review examiner had no authority to consider the separate legal question of whether the claimant satisfied the eligibility criteria under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). *See* Board of Review Decision 0080 6688 30 (Oct. 18, 2023). Thus, the review examiner could not disqualify the claimant from receiving PUA benefits for this reason.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he was not eligible for regular, extended, or PEUC benefits as of the week ending January 2, 2021, as required under § 2102(a)(3)(A)(i) of the CARES Act.

The review examiner’s decision is reversed. The claimant is entitled to receive PUA benefits for the week ending January 2, 2021, and for subsequent weeks, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 28, 2024**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano did not participate in this decision.

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<sup>4</sup> *See* UIPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

**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.

REB/rh