

Although 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, she denied PUA benefits because he did not lose work for listed COVID-19 related reason. Held the review examiner did not have the authority to address this second issue, as it was not the legal issue on appeal.

**Board of Review
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Issue ID: N6-HJ2V-2745

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 3, 2020, which was initially approved. However, in a determination issued on February 17, 2022, the DUA denied benefits for the weeks ending July 4, 2020, and thereafter based upon potential claim eligibility in another state. 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 June 6, 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, self-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 system, FastUI.

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 ineligible for PUA benefits 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 are set forth below in their entirety:

1. The claimant filed a claim for Massachusetts Pandemic Unemployment Assistance (PUA) with an effective date of May 3, 2020.

2. The claimant's weekly benefit amount (WBA) was determined to be \$267.
3. The claimant requested MA PUA benefits for weeks ending 5/9/20 to 9/5/20.
4. The claimant is a Massachusetts resident and was a college student in [City A] 2020.
5. The claimant was not employed in 2020 prior to filing for PUA benefits and did not have an offer for employment that was withdrawn due to COVID-19 related circumstances prior to filing for PUA benefits.
6. The claimant has never worked in Tennessee.
7. On February 17, 2022, the Massachusetts DUA sent the claimant a Notice of Eligibility Issue Determination, informing him that he was not eligible to receive benefits as of July 4, 2020.
8. An Interstate Benefit Inquiry (IBIQ) made through the UI Interstate Connection Network (ICON) showed Tennessee earnings of \$59,420 for a Social Security number that was incorrectly attached to the claimant's PUA file.
9. The Tennessee earnings were under a Social Security number that was one number different (digit transposed) from the claimant's Social Security number.
10. Any overpayment was not the result of fault.

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. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. 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.¹ 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. . . ." Claimants are not eligible to receive PUA benefits in Massachusetts if they are eligible to receive unemployment benefits in another state.²

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

² See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sep. 3, 2021), 4(c), p. 8.

In this case, a Tennessee employer mistakenly reported wages under the claimant's Social Security number. *See* Finding of Fact # 8. The claimant submitted a copy of his Social Security card in support of his testimony, and it was entered into evidence as Exhibit # 9. The review examiner found that the claimant did not work for a Tennessee company. *See* Finding of Fact # 9. Absent other evidence that the claimant earned sufficient wages in Tennessee to qualify for an unemployment claim in that state, he may not be disqualified from receiving PUA benefits in Massachusetts due to eligibility or potential eligibility for a claim in another state.

Nevertheless, the review examiner concluded that the claimant was not eligible for PUA benefits in Massachusetts because he had not provided credible evidence to show that he had lost work, self-employment, or a job offer due to a listed COVID-19 reason. It is true that claimants for PUA benefits must show that they became unemployed due to a COVID-19 related reason listed in § 2102(a)(3)(A)(ii)(I)(aa)–(kk) of the CARES Act, and they must file in the state in which their employment was impacted.³ However, this legal question was not before the review examiner. The DUA did not issue a determination that disqualified the claimant on the ground that he failed to establish that he had lost work in Massachusetts due to a listed COVID-19 related reason. It was the claimant's appeal of the DUA's February 17, 2022, determination, disqualifying the claimant based on his potential eligibility for regular unemployment benefits in another state, which formed the basis for the hearing.

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 of § 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 or extended benefits in another state, 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 weeks ending July 4, 2020, and thereafter, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 28, 2024



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

³ *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

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