

The claimant filed for PUA benefits in Massachusetts and unemployment benefits in Vermont. In Vermont, the claimant was found to be monetarily ineligible for benefits. Therefore, the claimant did not have an active claim in Vermont when she applied for PUA benefits in Massachusetts. Board further held that, given her ineligibility in Vermont, she did not falsely report that she was ineligible in another state on her MA PUA application.

**Board of Review
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Issue ID: N6-HJ6T-J6NV

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 8, 2020, which was denied in a determination issued on June 3, 2022. 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 March 13, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to meet her burden to show that she did not qualify for regular unemployment benefits. 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 obtain more information about the claimant's out-of-state employment and any associated unemployment insurance claims. The claimant attended the remand hearing. 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 had an active claim in Vermont and is at fault for the overpayment of Massachusetts PUA 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) on April 22, 2020, with an effective date of March 8, 2020, in the Commonwealth of Massachusetts.

2. The claimant's weekly benefit amount was determined to be \$267.00.
3. The claimant filed a claim with the State of Vermont on March 28, 2020, with an effective date of March 22, 2020.
4. The claimant requested unemployment benefits from Vermont for the weeks ending March 8, 2020, April 4, 2020, April 11, 2020, April 18, 2020, and April 25, 2020. The claimant did not receive benefits from the State of Vermont.
5. The State of Vermont found the claimant to be monetarily ineligible for benefits.
6. The claimant submitted an email to the State of Vermont on April 27, 2020 and withdrew their claim for benefits. The State of Vermont shows the claim was withdrawn by the claimant there prior to May 4, 2020.
7. On February 8, 2022, the State of Vermont posted and backdated a Withdrawal/Invalid Claim (WIC2) indicating their claim was withdrawn.
8. The claimant has worked as a self-employed licensed massage therapist since April 28, 2011. The claimant's license was granted by and is renewed by the Commonwealth of Massachusetts Division of Professional Licensure.
9. Prior to the COVID-19 pandemic, the claimant worked year-round on [City A, Massachusetts], with most of their practice from May through October.
10. The claimant would also work year-round in western Massachusetts, where they lived; however, most of their clients were located in [Location D].
11. In 2019, the claimant earned W-2 wages, in the amount of \$2,512.30, for work performed for a Massachusetts municipality.
12. In 2019, the claimant received self-employment earnings, in the amount of \$5,480.00, from a licensed massage therapist company located in [City B, Massachusetts].
13. In 2019, the claimant received self-employment earnings, in the amount of \$4,922.75, from a licensed massage therapist company located in [City C, Massachusetts].
14. The claimant worked in the State of Vermont from December 2019 through March 2020.
15. In 2019, the claimant received self-employment earnings, in the amount of \$1,163.50, from a company in the State of Vermont.

16. In 2019, the claimant earned W-2 wages, in the amount of \$377.14, from a coffee shop in the State of Vermont.
17. In 2020, the claimant earned W-2 wages, in the amount of \$1,453.54, from a mountain resort located in the State of Vermont.
18. The claimant did not have any receipts or other sources of income in 2020.
19. The claimant was the primary caretaker of one of their parents who was fighting cancer. The other parent was not able to take care of their spouse on their own.
20. Neither their western Massachusetts clients, nor [City A, Massachusetts] clients, wanted to receive massage therapy services in 2020 due to COVID-19. As a result, the claimant lost all of their income driven from massage therapy services in 2020.
21. The claimant certified for and was paid PUA benefits in Massachusetts for every week beginning the week ending March 21, 2020, through the week ending July 17, 2021.
22. The claimant certified for PUA benefits because, after being determined monetarily ineligible for benefits in the state of Vermont, they believed that they were eligible for PUA in Massachusetts.
23. In July 2021, after receiving their second shot of the Moderna vaccine, the claimant returned to work.
24. In 2021, the claimant received self-employment earnings, in the amount of \$15,287, from the same licensed massage therapist company located in [City C, Massachusetts].
25. A Notice of Eligibility Issue Determination was issued on February 2, 2022, stating the Claimant had an active claim or potentially qualified for benefits in another state and did not meet the eligibility requirements as of the week ending March 28, 2020, and indefinitely thereafter to collect PUA in Massachusetts. The Notice contained fault reasoning.
26. The claimant appealed DUA's determination.

Credibility Assessment:

The claimant offered substantial and credible testimony and documentary evidence (in the form of multiple 1099s and their massage therapist license) to show that their work and income in Massachusetts was severely impacted by the COVID-19 public health emergency. Furthermore, the provided WIC2 confirms that the claimant was not monetarily eligible in Vermont and did not receive benefits in that

state. As a whole, the claimant's testimony and documentation are accepted as credible.

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 had an active unemployment claim in Vermont and that she is at fault for the receipt of overpaid Massachusetts 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 she is a covered individual within the meaning of the CARES Act. One of the criteria for being a covered individual is that the person is not eligible for regular unemployment compensation or extended benefits under state or federal law.² Claimants are not eligible to receive PUA benefits in Massachusetts if they are eligible to receive unemployment benefits in another state.³

In this case, the claimant filed claims in Massachusetts and Vermont, effective March 8, 2020, and March 22, 2020, respectively. Consolidated Findings ## 1 and 2. Although the claimant requested several weeks of unemployment benefits from Vermont, she did not receive these benefits because the State of Vermont concluded that the claimant was monetarily ineligible for benefits. Consolidated Findings ## 4 and 5. Therefore, the claimant did not have an active claim for unemployment benefits in Vermont and was not receiving benefits. Since the claimant did not qualify for regular unemployment compensation in another state, she may be eligible for a Massachusetts PUA claim.

We next consider the review examiner's conclusion that the overpayment was a result of the claimant's fault. The review examiner issued her decision pursuant to the following provisions under G.L. c. 151A, § 69:

- (a) The department may recover . . . any amounts paid to an individual through error, . . . If any individual fails to pay when due any amount paid to said individual because of such individual's *failure knowingly to furnish accurate information concerning any material fact*, including amounts of remuneration received, as provided in subsection (c) of section twenty-four, such overdue amounts shall carry interest at a per annum rate provided by subsection (a) of section fifteen from the due date until paid. The total amount of interest assessed shall not exceed fifty percent of the total amount due.

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

² See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, (April 5, 2020), 4(a).

³ See UIPL 16-20, Change 6 (Sep. 3, 2021), 4(c), p. 8.

...

(e) At the time the department determines that an erroneous payment from the Unemployment Compensation Fund was made to an individual due to the individual's *misrepresentation of a material fact or failure to disclose a material fact that the individual knew, or reasonably should have known, was material*, the individual shall be assessed a penalty equal to 15 per cent of the amount of the erroneous payment . . .

(Emphasis added.)

The DUA regulations at 430 CMR 4.23, define the phrase “failure knowingly to furnish accurate information” in G.L. c. 151A, § 69(a), to mean that the overpayment resulted from information which the individual knew or should have known to be incorrect, or a failure to furnish information which she knew or should have known to be material.

The review examiner concluded that the claimant gave information that the claimant knew or reasonably should have known was inaccurate when she reported on her Massachusetts PUA application that she was not eligible for or receiving benefits from another state.

Given that the claimant was found to be monetarily ineligible for benefits in Vermont, the claimant did not provide inaccurate information when she reported that she was not eligible for or receiving benefits from another state on her initial Massachusetts PUA claim. Consolidated Finding # 5. Thus, the claimant did not provide inaccurate information that led to an overpayment of Massachusetts PUA benefits.

We, therefore, conclude as a matter of law that the claimant did not have an active unemployment claim at the time she applied for PUA benefits from Massachusetts. We further conclude that the claimant did not knowingly fail to furnish accurate information to the DUA within the meaning of G.L. c. 151A, § 69(a).

The review examiner’s decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 28, 2020, and for subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 24, 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.

TCF/th