

Claimant is eligible for PUA benefits because he demonstrated that he experienced a significant decrease in his customary work as an independent contractor delivering packages. He had fewer work hours and earnings subsequent to returning to work after testing positive for COVID-19 and being in quarantine for two weeks.

**Board of Review
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Issue ID: N6-HJFK-J78J

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 we affirm in part and reverse in part.

The claimant filed a claim for PUA benefits with the DUA, effective April 11, 2021, which was denied in a determination issued on February 14, 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 beginning the week ending May 1, 2021, in a decision rendered on March 17, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined 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 2020, and, thus, the claimant was not eligible for PUA 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 for the purpose of taking additional evidence regarding the claimant's employment. The claimant attended the remand hearing. Thereafter, the review examiner issued his 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 not able and available for employment because the claimant was a full-time student and working part-time, 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 moved to Massachusetts from Tennessee in January 2021 to attend college. The claimant entered a full-time master's program at [College] and attended class approximately two hours a day three times a week.
2. The claimant was self-employed as an independent contractor delivery driver for [Company].
3. The claimant's [Company] work was organized by the 'delivery block.' Each day the claimant would check via app what blocks were available to him. The blocks were two to three hours long, but the claimant would usually complete the deliveries in 90 minutes to two hours. The pay for each block was variable since pay was not based simply on hours or number of deliveries but varied according to factors such as type of delivery, weight of packages, complexity of route etc.
4. The claimant tested positive for COVID-19 in April 2021 and quarantined for two weeks.
5. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) with an effective date of April [11], 2021. The Department of Unemployment Assistance (DUA) determined the claimant has a Weekly Benefit Amount of \$267.
6. The claimant received PUA benefits for the weeks ending April 17th and 24th. The claimant returned to work on May 2, 2021.
7. Prior to the COVID break, the claimant worked an average of 12-14 delivery blocks a week which would amount to 25–30 hours work.
8. Immediately prior to testing positive for COVID, the claimant received earnings of \$432.00 on March 30 and was paid five times in the first two weeks of April, receiving a total of \$1,312.00 in April.
9. Upon his return to work, the claimant worked seven blocks in the week May 2–8, 2021, working approximately 21 hours. The claimant earned \$254.00 that week.
10. For the rest of May and into June 2021, the claimant was assigned an average of four blocks a week. The claimant was paid \$174.00 on May 21; \$84 on May 25; \$150 on May 29; \$98 on June 1; and \$65.50 on June 4.
11. The assignment and availability of delivery blocks through the [Company] app was based on the availability of the independent contractor. Having missed several weeks in April due to COVID, the claimant found fewer blocks on offer to him on a daily and weekly basis. The claimant took about two months to reestablish his previous volume of delivery blocks.

12. The claimant's school semester ended May 5, 2021. During the months of June and July, the claimant took one class a week with a time commitment of one hour a week.
13. On February 15, 2022, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits beginning the week ending May 1, 2021. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant participated in both the initial and the remand hearings via telephone.

The claimant testified that he had moved to Massachusetts from Tennessee in January 2021 to attend a master's degree program at [College]. The claimant said that the program involved being on campus about three times a week for two hours at a time.

The claimant stated that in addition to attending class he worked part-time as a self-employed independent contractor delivery driver for [Company]. The claimant described the way the work was organized with him checking each day via an app to see what work was available. The claimant spoke of how the work was available in delivery blocks of several hours each and how the pay for each block varied depending on factors beyond just the number of deliveries.

The claimant testified credibly that he tested positive for COVID in April 2021, and he missed work while quarantining. The claimant acknowledged that he received PUA benefits for two weeks for this time.

The claimant said that prior to the COVID induced break in work, he worked around 12–14 delivery blocks a week taking about 25–30 hours to complete the assignments. The claimant provided evidence of deposits from [Company] from the end of March and from April 2–16th. The April payments totaled \$1,312 and the claimant credibly testified that those payments were consistent with those received earlier in the year, averaging \$650 a week.

The claimant describes how the availability of delivery blocks was linked to the availability of the driver with more time slots available the more a driver worked. The claimant testified that in the first week after he returned to work, starting May 3rd he was only offered seven blocks, about half his previous average. The claimant provided evidence from the [Company] app that he worked seven blocks each week for the next month. The claimant provided evidence that he received deposits from Amazon on five occasions between May 21st and June 4th for a total of \$571.50.

The claimant provided credible and tangible evidence that he was working fewer hours and earning less income after he missed work due to COVID than before.

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 is ineligible for PUA benefits.

The claimant in this case seeks PUA benefits, an unemployment benefit program provided under § 2102 of the 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. To be considered a covered individual for PUA benefits, the claimant must self-certify that he is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). Among the criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk), is self-employed individuals who experienced a significant diminution of their customary services because of the COVID-19 public health emergency, even absent a suspension of services.²

After remand, the consolidated findings show that the claimant was self-employed as an independent contractor delivery driver for a parcel company as well as a full-time student. *See Consolidated Findings ## 1–2*. In April of 2021, the claimant tested positive for COVID-19 and was required to quarantine for two weeks. *See Consolidated Finding # 4*. Prior to his diagnosis, the claimant was working an average of 12–14 blocks per week which amounted to 25–30 hours per week. *See Consolidated Finding # 7*.

Upon his return to work after quarantining, the claimant experienced a decrease in the number of hours he was given because the assignment and availability of delivery blocks was contingent on the availability of the independent contractor. *See Consolidated Findings ## 10–11*. It is apparent that the claimant's absence from work due to testing positive for COVID-19 directly affected the number of blocks and hours the claimant was assigned once he returned to work. These findings show that the COVID-19 public health emergency caused a significant diminution of his customary delivery services.

However, Consolidated Finding # 11 provides that, after about two months, the claimant had reestablished his prior volume of deliveries. Since his workload at this point was no longer diminished, he would no longer be eligible for further PUA benefits.

We, therefore, conclude as a matter of law that the claimant has met his burden of showing that he lost work for a listed COVID-19 reason under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

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

² U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1)(kk), p. I-8.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive PUA benefits for the weeks ending May 1, 2021, through June 5, 2021, if otherwise eligible. The claimant is not eligible for benefits as of the week ending June 12, 2021, and thereafter.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 17, 2022



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.

TF/rh