

Where the claimant had not worked since 2018 and had not been offered any work prior to filing his claim, he did not show that he was out of work for a listed COVID-19 reason under the CARES Act. Held he is ineligible for PUA benefits.

**Board of Review
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Michael J. Albano
Member**

Issue ID: N6-HJPL-DFNP

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. Benefits were denied on the ground that the claimant did not show that he was unemployed due to the COVID-19 public health emergency.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020, which was denied in a determination issued on April 28, 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 to deny PUA benefits. The claimant timely appealed to the Board. However, because the Board did not act on his appeal within 21 days, it was deemed to be denied pursuant to G.L. c. 151A, § 41(a). The claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On March 19, 2023, the District Court ordered the Board to review the case on the merits. Consistent with this order, we have reviewed the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, and the District Court's Order.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant failed to show that, prior to filing his claim, he lost either work or an offer of work for an approved COVID-19 listed reason under the CARES Act, 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 PUA benefits, with an effective date of March 15, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. The claimant did not work in 2019 or 2020.

3. The claimant did not have an offer for employment in 2020.
4. On April 28, 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 February 8, 2020.
5. The claimant appealed the DUA's determination.

Ruling of the Board

In accordance with the Court's Order, 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 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 agree with the review examiner's legal conclusion that the claimant was ineligible for PUA benefits.

The claimant in this case seeks PUA benefits, a new 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. In order to meet the definition of a covered individual, an individual must be "unemployed, partially unemployed, or unable or unavailable to work" for a reason listed under the CARES Act, § 2102(a)(3)(A)(ii)(I).

In this case, the claimant seeks PUA benefits beginning on March 15, 2020. *See* Finding of Fact # 1. However, the findings show that the claimant had not performed any work whatsoever in 2019 or 2020. Finding of Fact # 2. Nor had he been offered employment prior to filing his claim. *See* Finding of Fact # 3. As there is no evidence that the claimant actually lost employment or self-employment due to the COVID-19 public health emergency, he does not meet the threshold eligibility requirements under § 2102(a)(3)(A)(ii)(I).

We, therefore, conclude as a matter of law that the claimant has failed to meet his burden to show that he was unemployed for a listed reason under the CARES Act, § 2102(a)(3)(A)(ii)(I).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning March 15, 2020, and for subsequent weeks.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 9, 2023



Paul T. Fitzgerald, Esq.
Chairman



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

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.

AB/rh