

**The claimant established that she had been working in Massachusetts for a catering company during 2020 and lost that work due to COVID-19 but had planned to stop on April 30, 2020, for reasons unrelated to COVID-19. She is entitled to PUA benefits until week ending May 2, 2020.**

**Board of Review  
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**Issue ID: N6-FPDR-FVHN**

### 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 March 22, 2020. The DUA determined the claimant was ineligible for PUA benefits on December 23, 2020. 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 in a decision rendered on March 21, 2022. We accepted the claimant's application for review.

The review examiner concluded that the claimant was ineligible for PUA benefits on the basis that the claimant failed to present substantial evidence to verify that she lost work due to the COVID-19 pandemic. 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 consider the documents submitted with the claimant's Board appeal. Thereafter, the review examiner issued his consolidated findings of fact and credibility assessment. 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 ineligible for PUA benefits under a Massachusetts claim because she failed to prove that she was employed with a catering business and lost work due to the COVID-19 public health emergency, is supported by substantial and credible evidence and is free from error of law.

### Consolidated 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 PUA benefits, with an effective date of March 22, 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 worked for a catering company as a gig worker for events as they arose.
3. She helped at the events as a food server, and the work involved carrying trays.
4. The work was sporadic and was normally confined to weekends.
5. The claimant began working for the employer in October of 2019 and continued into 2020.
6. The last time the claimant worked for the catering company in 2020 was during the two-week period ending February 9, 2020.
7. It is unknown specifically when the claimant worked between October of 2019 and February of 2020.
8. The claimant was next scheduled to work for the company in March of 2020, but the claimant did not do so because the COVID-19 public health emergency forced the catering business to restrict its business in mid-March of 2020 and to close completely in mid-April of 2020 for the rest of the calendar year.
9. At the time the claimant's scheduled work in mid-March of 2020 was cancelled, the claimant had a five-year-old daughter and was due to give birth by caesarian section in June of that year.
10. Because of her pregnancy, the claimant would have, apart from the pandemic, stopped working for the catering company approximately April 30, 2020, so that she could rest for a couple months before giving birth.
11. The claimant knew from having worked until nearly the end of her pregnancy with her older daughter that being pregnant was especially difficult towards the end and that being pregnant was not conducive to carrying catering trays or walking around.
12. The difficulties of the claimant's pregnancy were heightened because the claimant was to be thirty-eight years old when she gave birth in June.
13. The claimant was due late June or early July, and a caesarean was scheduled in advance for June 19, 2020.
14. The caesarean happened as scheduled.
15. During childbirth, the claimant experienced complications, included [sic] hemorrhaging, that put the claimant's life at risk.

16. A couple months later, the claimant, now without work as a result of the COVID-19 public health emergency, moved to Pennsylvania to be closer to family.
17. The claimant had returned to work about two months after giving birth to her first daughter and had intended to do similarly after the birth of her second daughter.
18. The claimant did not return to work after the birth of her second daughter as quickly as expected, however, because having just moved, the claimant required time to settle in.
19. Furthermore, the claimant's older daughter, who ordinarily would have entered kindergarten full-time in the fall of 2020, attended school in-person only two days per week and remained at home the other three days per week because of the COVID-19 public health emergency.
20. In early January of 2021, the claimant started working as an esthetician at a spa two days a week, the same two days that her older daughter was in school.
21. On the days the claimant worked, the claimant's mother cared for the claimant's younger daughter.

#### Credibility Assessment:

A letter from the employer states that the claimant worked for the catering company from October 2019 until mid-April of 2020. The letter is considered authentic since it appears on letterhead and the claimant credibly testified to its authenticity.

Although phrased in terms of dates “worked,” the letter identifies the dates the employer considered the claimant to be employed by the company. The claimant opined that the employer stated the claimant’s work ended mid-April of 2020 because that is when the employer’s business closed. In other words, the end date stated in the letter had nothing to do with when the claimant actually stopped working.

Furthermore, the claimant’s 2020 wages from the company as revealed in the claimant’s 2020 W-2 are limited to the wages reported in the February 14, 2020, earnings statement (for the pay period through February 9, 2020), both of which report total wages of \$560.51. The claimant did not claim to have worked beyond February 9, 2020, and she accepted the suggestion that she had not. Taken together, the claimant’s testimony, her February 14, 2020, earnings statement, and the claimant’s 2020 W-2 establish that the claimant did not work past February 9, 2020.

The claimant credibly testified that she was scheduled to work in mid-March of 2020 and that that work was cancelled. The claimant’s testimony was reinforced by

the letter from the employer that indicated the claimant worked, i.e., was employed, through mid-April.

The claimant uploaded a 2020 earnings statement and a 2020 W-2 from the company. She did not supply similar documents for 2019. She testified during the first hearing that she had been paid under the table. Thus, no such documents exist.

The claimant's employment with the catering company was impacted by a COVID-19 reason, namely that the COVID-19 public health emergency forced the business to close. This conclusion is supported by the March 30, 2022, letter, which states, "[The] Corona pandemic closed our operations [as of mid-April] for the remainder of the 2020 calendar year." In addition, the claimant testified that the business closed because of the pandemic. Under the Department's current guidance, the claimant's plausible assertion that her cessation of employment was caused by COVID-19 is sufficient without documentary support. The claimant's assertion is plausible since working as a [sic] catering as a food server involved contact with customers and such work was not feasible during the pandemic.

The claimant testified during the remand hearing that but for the shut-down of the catering business, she would have continued to work until giving birth to her daughter. During the original hearing, on the other hand, she testified that she would have stopped a couple months before. Her earlier testimony is considered more reliable since it was given significantly closer to the events in question.

During the first hearing, on March 1, 2022, the claimant was asked, "[Before] the pandemic, how long did you intend to continue to work before you stopped because of your pregnancy?"

The claimant responded, "Up until the last trimester pretty much." Attempting to clarify, the hearing officer asked the claimant, "Up until three months before you gave birth?"

"Well, a couple months."

Later in that same hearing, the hearing officer asked, "Why did you intend to stop working earlier when you were pregnant with [your younger daughter] than when you had stopped when you were working [and pregnant] with [your older daughter]?" (The claimant had by this point testified that she had worked until about two weeks before giving birth to her older daughter.)

The claimant explained the difference between the two situations, and she did not dispute that she would have worked for less time during her second pregnancy: "Because being older and being at high risk, it's not good to be on your legs and stuff like that. I was always very swollen at the end. I would go to the bathroom a lot." The conclusion that the claimant would not have worked after April 30, 2020,

is not based on the pregnancy itself but rather on the claimant's express testimony that she did not intend to work the last couple months of her pregnancy.

The claimant's estimate of a couple months is interpreted as two months. The caesarian was scheduled in advance and was probably scheduled for a couple weeks before the due date, which would have been approximately the end of June. For all the above reasons, it is concluded that, if not for the pandemic, the claimant would have stopped working as of April 30, 2020.

If not for the pandemic, the claimant would have continued not to work for about two months after giving birth, *i.e.*, through about the end of the summer. The claimant testified during the initial hearing that she had not intended to work for the first couple months anyway. After that two-month period, COVID-19 prevented the claimant from working since she had by that point lost her job and had less availability than she otherwise would have because of needing to care for her older daughter a few days a week.

### 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 in part with the review examiner's legal conclusion that the claimant is ineligible for PUA benefits.

The claimant in this case seeks PUA benefits, a new 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>1</sup> In order to qualify for PUA benefits, the claimant must show that she is a covered individual within the meaning of the CARES Act. To be considered a covered individual, the claimant must show that she is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I). This includes § 2102(a)(3)(A)(ii)(I)(jj), which provides that the person is unable to work because the place of employment is closed as a direct result of the COVID-19 public health emergency. Further, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.<sup>2</sup> Therefore, in order to be eligible for PUA benefits under a Massachusetts claim, the claimant must show that she lost work in Massachusetts for a listed reason under the CARES Act.

In his decision, the review examiner concluded that the claimant was not eligible for PUA benefits because she did not present sufficient evidence of employment with a catering company and a loss of work due to COVID-19.

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>2</sup> See U.S. Department of Labor Unemployment Insurance Program letter (UIPL) 16-20, Change 1 (Apr. 27, 2020), Attachment I, B (7), p. I-3.

After remand, the review examiner has found that the claimant was working in 2019 and the early portion of 2020 for the Massachusetts caterer but that a catering job was cancelled in mid-March, 2020, and her employer closed its business in mid-April 2020 due to COVID-19. *See* Consolidated Findings of Fact ## 2–6, and 8–9. However, the claimant had planned to stop working as of April 30, 2020, in anticipation of giving birth by cesarean section a couple of months later and using that time to rest. *See* Consolidated Findings ## 9 and 10.

The consolidated findings do not specify that the claimant was working for a Massachusetts employer. However, a 2020 Form W-2 from the employer shows Massachusetts addresses for it and the claimant. *See* Exhibit 12.<sup>3</sup> Together with the consolidated findings, this indicates that the claimant worked in Massachusetts for the employer in 2020 prior to her effective date. *See* Consolidated Findings of Fact ## 2, 5, 6, and 8.

These findings show that the claimant was not working as of her effective date of March 22, 2020, until April 30, 2020, because COVID-19 had forced her employer to close its business. As of April 30, 2020, she was not working due to pregnancy-related reasons that are wholly unrelated to the COVID-19 public health emergency. Therefore, she is eligible for PUA benefits only from the week beginning March 22, 2020, until the week ending May 2, 2020.

The record further shows that the claimant chose not to work for a couple of months after giving birth on June 19, 2020. She had moved to Pennsylvania to be closer to family, and she decided not to work for a period after having her second child and in order to have time to settle into her new location. *See* Consolidated Findings of Fact ## 13, 14, and 16–18. Again, such reasons for being out of work are not among the COVID-19 related reasons listed under the CARES Act.

Although the consolidated findings indicate that the claimant’s ability to work may have been limited during the fall of 2020, because her older daughter was home from school three days a week, nothing in the record suggests that the claimant had a job, or an offer of a job, which she had to decline because of her daughter’s remote learning schedule. *See* Consolidated Finding # 19. Under these circumstances, she has not shown that she lost work at any point after April 30, 2020, for a listed reason under the CARES Act.

We, therefore, conclude as a matter of law that the claimant has met her burden to show a loss of employment due to COVID-19 in Massachusetts for the reason listed in § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act for a limited period of time.

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<sup>3</sup> While not explicitly incorporated into the review examiner’s findings, Exhibit 12 is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to PUA benefits from the week beginning March 22, 2020, through the week ending May 2, 2020, if otherwise eligible. The claimant is not eligible for PUA benefits as of the week beginning May 3, 2020.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 11, 2024**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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](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.

BGM/rh