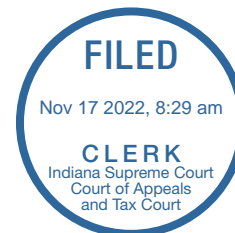


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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APPELLANT PRO SE

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## IN THE COURT OF APPEALS OF INDIANA

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G.M.,  
*Appellant,*

v.

Review Board of the Indiana  
Department of Workforce  
Development,  
*Appellee*

November 17, 2022

Court of Appeals Case No.  
22A-EX-1049

Appeal from the Indiana  
Department of Workforce  
Development

Gabriel Paul, Chairman  
Larry A. Dailey, Member  
Heather D. Cummings, Member  
Cassandra Clark, Administrative  
Law Judge

Case Nos. 22-R-1492, -93

**Crone, Judge.**

## Case Summary

- [1] G.M., pro se, appeals two decisions of the Review Board of the Indiana Department of Workforce Development (the Review Board), both of which affirmed the decision of an administrative law judge (ALJ) denying him pandemic unemployment assistance (PUA) benefits under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. He argues that the Review Board erroneously concluded that he was ineligible for PUA benefits. We affirm.<sup>1</sup>

### Facts and Procedural History<sup>2</sup>

- [2] In August 2021, in case number 1473180 (case 1473), a claims investigator with the Department of Workforce Development (the Department) issued a determination that G.M. was not eligible to receive PUA benefits and suspended G.M.'s benefits the week ending December 19, 2020. Ex. Vol. 3 at 4. In case number 1474942 (case 1474), a claims investigator issued a determination that G.M. was not eligible to receive PUA benefits and suspended G.M.'s benefits the week ending January 2, 2021. *Id.* at 11. G.M. appealed both denials.
- [3] In February 2022, an ALJ conducted a hearing in both cases at which G.M. participated by phone. The ALJ subsequently affirmed the denials of PUA

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<sup>1</sup> G.M. has also filed a motion to grant PUA payments. Because it is duplicative of the relief requested by G.M. in his appeal, we deny the motion by separate order.

<sup>2</sup> G.M. has not filed an appellant's appendix as required by Indiana Appellate Rule 49(A), which has hindered our review.

benefits. In case 1473, the ALJ found that G.M. had not been employed, self-employed, or scheduled to work anywhere since 2018. *Id.* at 72. Accordingly, the ALJ concluded that G.M. did not qualify as a “covered” individual under the CARES Act and was ineligible for PUA benefits. *Id.* at 73. In case 1474, the ALJ concluded that G.M. had failed to provide documentation to prove employment, self-employment, or planned commencement of employment or self-employment as required under the CARES Act and therefore was ineligible for PUA benefits. *Id.* at 79.

- [4] G.M. appealed to the Review Board. In April 2022, the Review Board, without holding a hearing or considering additional evidence, adopted the ALJ’s findings of fact and conclusions of law and affirmed the ALJ’s determinations that G.M. was ineligible for PUA benefits. This appeal ensued.

## **Discussion and Decision**

- [5] G.M. claims that the Review Board erred in denying him PUA benefits. “An assignment of errors that the decision of the review board is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of facts.” Ind. Code § 22-4-17-12(f); *Chrysler Grp., LLC v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 960 N.E.2d 118, 122 (Ind. 2012). On appeal of the Review Board’s decision, we apply a three-part standard of review: “(1) findings of basic fact are reviewed for substantial evidence; (2) findings of mixed questions of law and fact—ultimate facts—are reviewed for reasonableness; and (3) legal

propositions are reviewed for correctness.” *Recker v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 958 N.E.2d 1136, 1139 (Ind. 2011). In applying the substantial evidence standard, we neither reweigh the evidence nor assess its credibility and consider only the evidence most favorable to the Review Board’s findings. *Chrysler*, 960 N.E.2d at 122.

[6] In response to the COVID-19 pandemic, Congress passed the CARES Act of 2020. 15 U.S.C. § 9001, *et seq.* PUA was created by the CARES Act to provide benefits to those who did not qualify for traditional unemployment benefits. *Holcomb v. T.L.*, 175 N.E.3d 1177, 1179 (Ind. Ct. App. 2021) (citing 15 U.S.C. § 9021)). Pursuant to 15 U.S.C. § 9021(a)(3)(A), a “covered individual” eligible to collect PUA benefits is an individual who satisfies three requirements. First, a “covered individual” is an individual who

is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under [15 U.S.C. § 9025], including an individual who has exhausted all rights to regular employment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under [15 U.S.C. § 9025].

*Id.* § 9021(a)(3)(A)(i). Second, the individual must provide self-certification that the individual “is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because ... the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19

and seeking a medical diagnosis.”<sup>3</sup> *Id.* § 9021(a)(3)(A)(ii). Third, the individual is required to provide

documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for [PUA] under this section or the date on which an individual is directed by the State Agency to submit such documentation ... .

*Id.* § 9021(a)(3)(A)(iii).

Turning first to case 1473, we observe that G.M. does not dispute the ALJ finding that he had not been employed, self-employed or scheduled to work anywhere since 2018. Based on this finding, the ALJ concluded that G.M. did not qualify as a “covered” individual. Ex. Vol. 3 at 73. In reaching this conclusion, the ALJ relied on the Department of Labor’s Unemployment Insurance Program Letter No. 16-20, Change 4 (the UIPL). *See* John Pallasch, U.S. Dep’t of Labor, *Unemployment Insurance Program Letter No. 16-20, Change 4* (Jan. 8, 2021) <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-16-20-change-4> [<https://perma.cc/HJZ6-53DV>]; pdf directly available at [https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2021/UIPL\\_16-20\\_Change\\_4.pdf](https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2021/UIPL_16-20_Change_4.pdf) [<https://perma.cc/8R67-N4Z3>]. The UIPL explains that a

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<sup>3</sup> There are ten additional enumerated reasons that are not relevant to this appeal.

“covered individual” includes an individual “lacking sufficient work history.” *Id.* at I-4. The UIPL states that an individual “lacking sufficient work history” means an individual “with a recent attachment to the labor force (meaning that he or she worked at some point from the start of the applicable tax year to the date of filing).” *Id.* at I-4-I-5. Further, the UIPL provides that individuals who had a bona fide offer to start work on a specific date, but who were unable to start due to one of the reasons in 15 U.S.C. § 9021(a)(3)(A)(ii) are considered to have “a recent attachment to the labor force.” *Id.* at I-5. The ALJ concluded that G.M. was not eligible for PUA benefits because “he was not unemployed, partially unemployed, or unable to work in accordance with the requirements” of the CARES Act of 2020.” Ex. Vol. 3 at 73.

- [7] G.M. claims that he is a covered individual entitled to PUA benefits because he submitted documentation to the Department to prove that he contracted COVID-19. G.M. is under the mistaken impression that simply having COVID-19 qualifies one for PUA. He may have had COVID-19, but he must meet all the requirements in 15 U.S.C. § 9021(a)(3)(A) to be a covered individual eligible for PUA benefits. G.M. filed for PUA benefits in July 2021 for the tax year 2020. However, it is undisputed that he had not been employed, self-employed, or scheduled to work anywhere since 2018. Because G.M. had not worked or received a bona fide offer to work in 2020, the applicable tax year, he did not have a recent attachment to the labor force necessary to qualify him as a covered individual for purposes of the CARES Act.

[8] G.M. argues that he is protected from attachment, citing 20 C.F.R. § 625.15, which protects “applicants for [Disaster Unemployment Assistance (DUA)] from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment, of their rights to DUA.”<sup>4</sup> G.M. confuses two different meanings of attachment. Attachment as used in 20 C.F.R. § 625.15 refers to “an ancillary proceeding auxiliary or incidental to the main action, by which the alleged debtor’s property, subject to execution, is taken to secure the payment of any judgment that may be rendered in the main action.” *Lakes & Rivers Transfer, a Div. of Jack Gray v. Rudolph Robinson Steel Co.*, 736 N.E.2d 285, 291 (Ind. Ct. App. 2000). In contrast, “attachment to the labor force” for purposes of determining eligibility for PUA benefits under the CARES Act means “worked at some point from the start of the applicable tax year to the date of filing.” UIPL at I-4, [https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2021/UIPL\\_16-20\\_Change\\_4.pdf](https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2021/UIPL_16-20_Change_4.pdf) [<https://perma.cc/YS9F-YNN8>]. We find no error in the Review Board’s decision in case 1473.

[9] In case 1474, the ALJ found that G.M. had received notification from the Department that he was required to submit proof of employment, self-employment, or planned commencement of employment or self-employment

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<sup>4</sup> 15 U.S.C. § 9021(h) provides that section 625 shall apply to the CARES Act as if the term “COVID-19 public health emergency” were substituted for the term “major disaster” wherever it appears in section 625 and the term “pandemic” were substituted for the term “disaster” wherever it appears in section 625.

through his Uplink Self-Service homepage.<sup>5</sup> Ex. Vol. 3 at 78. It further found that he had “not uploaded any documents regarding proof of employment or self-employment.” *Id.* at 79. G.M. does not dispute these findings. The ALJ concluded that G.M. was required to provide documentation to substantiate proof of employment, self-employment, or planned commencement of employment or self-employments pursuant to 15 U.S.C. § 9021(a)(3)(A)(iii) and failed to do so. Accordingly, the ALJ found he was ineligible for PUA benefits.

[10] G.M. appears to argue that the documentation he provided to the Department regarding his COVID-19 diagnosis satisfies the requirement for documentation, citing 20 C.F.R. § 625.9(a)(2). Section 625.9(a)(2) states, “An individual’s eligibility for DUA shall be determined, where a reliable record of employment, self-employment and wages is not obtainable, on the basis of an affidavit submitted to the State agency by the individual, and on a form prescribed by the Secretary which shall be furnished to the individual by the State agency.” The purpose of the affidavit referred to in 20 C.F.R. § 625.9(a)(2) is to provide evidence of employment. G.M. did not provide any type of employment documentation to the Department. Therefore, the Review Board did not err in denying G.M. PUA benefits in case 1474. Accordingly, we affirm the Review Board’s decisions.

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<sup>5</sup> “Uplink is the name of Indiana Department of Workforce Development’s automated self service Unemployment Insurance system.” Ind. Dep’t of Workforce Dev., *Uplink FAQ*, <https://www.in.gov/dwd/indiana-unemployment/individuals/uplink-faq>.



[11] Affirmed.

May, J., and Weissmann, J., concur.