

The claimant presented a valid Florida driver's license and other documentation of her identity, including six-years' worth of tax returns, documentation confirming the returns were filed, a letter confirming the claimant requested new Social Security card in 2020, her passport, Permanent Resident card, and paystubs verifying the address and Social Security number used to file the claim for benefits. This documentation is sufficient to verify the claimant's identity as the person who filed the claim.

**Board of Review
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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 unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with the DUA, effective October 9, 2022, which was denied in a determination issued on October 29, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on November 26, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not meet the filing and registration requirement to verify her identity as the person who filed this claim for unemployment insurance benefits, and, thus, she was disqualified under G.L. c. 151A, § 25(a). 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 afford the claimant an opportunity to present additional documentary proof of her identity. 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 did not provide sufficient documentation to verify her identity because she presented pictures of two different Social Security cards bearing her name, 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 Unemployment Assistance, effective October 8, 2023. The claimant filed the claim with an address in [City A], Massachusetts.
2. The Department of Unemployment Assistance (DUA) issued a Notice of Non-Monetary Issue Determination Identity Verification, dated October 29, 2022, advising the claimant that she had failed to verify her identity.
3. The claimant filed tax returns for the tax years 2017 through 2022. Each tax return shows an address in [City B], Florida. The Social Security number on each of the returns matches the number the claimant used to file her unemployment claim (ending in -[AAAA]).
4. The claimant has tax documentation showing work for either her or her spouse in New York state.
5. The claimant was issued a Social Security number in 2016. The claimant does not have the Social Security card she was issued in 2016. It is lost.
6. On February 21, 2020, the Social Security Administration sent the claimant a letter to a Florida address stating: “This is to acknowledge that you applied for a Social Security number on February 21, 2020.” The document does not indicate that the claimant had requested a replacement card.
7. The claimant has two (2) cards, both having the appearance of Social Security cards, both bearing the claimant’s name, and both purportedly issued on February 25, 2020.
8. The Social Security number on the first card is: XXX-[BB-BBBB]. This number does not match the Social Security number used to file her unemployment claim.
9. The Social Security number on second card is: XXX-[CC-AAAA]. This number matches the number associated with the claimant’s unemployment account.
10. The claimant has a Florida driver’s license issued on February 26, 2020, with an expiration date of May 17, 2028. It shows the claimant’s name and a date of birth of May 17, 1993. The license bears a photograph that physically resembles the claimant. The address shown on the driver’s license is [Address] in [City B], Florida.
11. The address on the Florida driver’s license matches the address shown on the claimant’s 2021 and 2022 tax returns. The birthdate on the Florida driver’s license matches the birthdate shown on the claimant’s Permanent Resident Card.

12. The claimant possesses a Permanent Resident Card indicating that the claimant has been a [permanent] resident since April 23, 2020.
13. Prior to filing her 2022-01 claim for unemployment benefits, the claimant worked at a restaurant in [City A], Massachusetts and stayed on the island. She has paystubs issued by the restaurant. The claimant has a delivery slip/invoice showing that items were delivered to an address on [City A], with a billing address in Florida.
14. The claimant did not move to Florida after working in Massachusetts in 2022. The claimant has resided in and split her time between the two states, intermittently working at the [City A] restaurant.
15. Since at least 2017, the claimant has maintained an address in Florida, as indicated on tax returns, the delivery slip/invoice, the correspondence with the Social Security Administration, the Florida driver's license, and correspondence sent to the Board of Review.
16. The claimant has not received documentation from the Social Security Administration in error.

Credibility Assessment:

As indicated in the original decision, the claimant offered conflicting information regarding her Social Security number. During the original hearing, the claimant held up a screen shot of a card with [Social Security] number XX-[BB-BBBB], with the claimant's name and issuance date of February 25, 2020 (Exhibit 8). Without any prompting from the examiner, the claimant put the phone down, looked at her phone, appeared flustered, said sorry several times, and held up a new picture, showing a different Social Security number, this time showing XX-[CC-AAAA] (Exhibit 9). When asked to recite her Social Security number, she recited the second number from Exhibit 9. Further, during the first hearing, the claimant indicated that the first number, showing -[BBBB] was not her Social Security number, and if it was in the file, it is not her number. This later testimony does not make sense, as the claimant was the one who showed the picture of the card ending in -[BBBB] in the first place (despite her later denials during the hearing and in her appeal to the Board of Review). The claimant very clearly showed two different Social Security numbers over the course of the hearing.

During the remand hearing, the claimant offered no explanation for the discrepancy which is documented in the record. She testified that she does not have a card that resembles a Social [Security] card bearing a number that differs from the Social Security number associated with her unemployment account. Nevertheless, as indicated above, she was the one who showed it to the examiner during the initial hearing. In its remand order, the Board of Review asked whether she has ever received any documentation in error from the Social Security Administration. The

claimant answered in the negative, further calling into question how she would have two documents with different Social Security numbers. She also testified at the first hearing that in 2016, she received a Social Security number and that the card issued in 2020 has the same Social Security number (suggesting that it was never changed or that she was never given a new number). The claimant has no record of which Social Security number she was issued in 2016.

Finally, it is noted that the claimant testified that she requested a replacement Social Security card in 2020. This does not appear to be accurate. The letter, dated February 21, 2020 (a few days before the issuance of both alleged Social Security cards and the Florida driver's license), requests a new Social Security number, several months before the permanent resident card notes that she was first a resident (April 2020).

Thus, findings of fact have been made about the documentation presented. However, as the claimant continued to deny that she had a different card with a different Social Security number, no definitive finding of fact could be made as to why this would be the case.

As to the other documents and the Board's question as to whether the claimant moved to Florida after working in Massachusetts in 2022, the claimant testified that this was not the case and that she moved back and forth between the states. The documentation is quite clear that, since at least 2017, the claimant has maintained a home address in Florida---that is the location where she continuously files her federal income tax returns. Indeed, the document submitted to verify her address shows a billing address in Florida, and the appeal documents submitted to the Board of Review have a return address from Florida.

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 conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject the portion of Consolidated Finding # 6 that states that the document at issue does not indicate the claimant requested a replacement card as inconsistent with the evidence of record. Further, although Consolidated Finding # 7 is accurate insofar as it reflects the fact that the claimant presented two different documents for her Social Security card, as explained below, it fails to accurately describe the evidence presented by the claimant. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's original conclusion that the claimant failed to verify her identity.

In order to obtain benefits, the claimant must follow the provisions of G.L. c. 151A, § 25(a), which provides, in relevant part, as follows:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for—(a) Any week in which he fails without good cause to comply with the registration and filing requirements of the commissioner.

In this case, the issue presented to the review examiner was whether the claimant could demonstrate that she was the person who filed a claim and not an imposter, who may have borrowed or stolen an identity to fraudulently collect benefits.

At the initial hearing, the claimant presented pictures from her phone of two different Social Security cards, each bearing the claimant's name and same issue date. *See* Consolidated Findings ## 8 and 9. However, pictures on a claimant's phone are not evidence that she physically *possesses* two Social Security cards. As the review examiner denied the claimant's request to retrieve and present her Social Security card at the hearing, we believe that the portion of Consolidated Finding # 7 that indicates the claimant *has* two cards is inaccurate. The photographs on the claimant's phone are evidence only that she has two photographs of two different Social Security cards.

While he did not enter the aforementioned evidence into the record, the review examiner appears to have relied on other evidence to reject the claimant's contention that she requested a replacement Social Security card in 2020. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). "The test is whether the finding is supported by 'substantial evidence.'" *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted). Based upon the record before us, we cannot accept this finding.

The review examiner indicated that he rejected the claimant's contention in this regard as not credible, because the letter from the Social Security Administration, which was admitted into evidence as Remand Exhibit 15, was dated February 21, 2020, several months prior to the date the claimant was a resident. *See* Consolidated Findings ## 6 and 12. Based upon our review of the consolidated findings, the record, and the review examiner's credibility assessment, we believe that he improperly conflated the claimant having been granted Permanent Resident status with the plain language meaning of the term "resident." The claimant's receipt of Permanent Resident status does not alter the fact that she was issued a Social Security number in 2016 and has been living and working in the United States since 2016. *See* Consolidated Findings ## 3, 5, and 15. The date the claimant's Permanent Resident Card was issued is irrelevant to the question of whether she requested a new Social Security card in 2020.

Remand Exhibit 15 shows that the claimant requested a new Social Security number on February 21, 2020. Consolidated Finding # 6. The Social Security Administration then issued the claimant a Social Security card on February 25, 2020, four days after she submitted the request. *See* Consolidated Findings ## 7 and 9. As the Social Security Administration appears to have issued the claimant a Social Security card in response to her February 21st request, we believe that the

documentary evidence of record supports the claimant's uncontested testimony that she did request and received a new Social Security card in 2020.

On appeal to the Board, the claimant submitted several scanned copies of the front and back of the Social Security card issued on February 25, 2020, and bearing the same name and Social Security number used to file the instant claim for benefits. These scans also show the Social Security card before and after the claimant signed it, as well as the mailer that was attached to the card at the time it was received.¹ We believe that these additional details, in conjunction with evidence that the claimant requested and received this new Social Security card in February 2020, support a conclusion that the claimant has possession of that Social Security card.

The record now also includes Remand Exhibits 7, 8, and 9, which are copies of the claimant's 2019, 2020, and 2021 federal income tax returns. *See* Consolidated Finding # 3. Each of these Remand Exhibits contains documentation confirming the Internal Revenue Service accepted and processed the claimant's tax returns for that year.² The claimant's Social Security number on each of these tax returns matches the Social Security number the claimant used when filing her claim for benefits. Consolidated Finding # 3. Therefore, while we acknowledge that the contents of Exhibit 8 raise some concern, the veracity and volume of the other documentary and testimonial evidence of record is sufficient to verify the claimant's Social Security number.

On remand, the claimant also provided a valid Florida driver's license, which was admitted into evidence as Remand Exhibit 10. The address on the claimant's license matches the address on her 2021 and 2022 tax returns, and the full name and birthdate listed on the Florida driver's license match the claimant's Permanent Resident Card. Consolidated Finding # 11. We further note that the claimant's Serbian passport, which was admitted into evidence as Remand Exhibit 11, bears the same name and birthdate as both the Florida driver's license and the Permanent Resident Card.³ *See* Consolidated Findings ## 10 and 11. The claimant also provided paystubs from 2022 and 2023, which were admitted as Remand Exhibits 13 and 14, each bearing the claimant's name, the name of her Massachusetts employer of record, and the Massachusetts address she used to file her claim for benefits. *See* Consolidated Findings ## 13 and 14. As the review examiner found that the individual appearing at the hearing resembles the photo on the Florida driver's license and multiple other documents corroborate the claimant's address and Social Security number, we are satisfied that the claimant has shown that she is the person who filed a claim and not an imposter.

We, therefore, conclude as a matter of law that the claimant has produced substantial and credible evidence to verify her identity. She has met the registration and filing requirements for benefits pursuant to G.L. c. 151A, § 25(a).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning May 21, 2023, and for subsequent weeks if otherwise eligible.

¹ For unknown reasons, the review examiner failed to enter these documents into evidence at the remand hearing. We decline to remand this single party hearing a second time solely for this purpose.

² This information contained within Remand Exhibits 7, 8, and 9, while not explicitly incorporated into the record, are part of the unchallenged evidence introduced at the hearing and placed in the record, and are 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).

³ Remand Exhibit 11 is also part of the unchallenged evidence presented at the hearing and admitted into evidence.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 28, 2024



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.

LSW/rh