

The claimant's benefit year began on March 15, 2020. The claimant, a non-U.S. citizen, does not have current employment authorization to work in the U.S. Although she applied to renew her employment authorization and it is in process, she is ineligible for PUA benefits under G.L. c. 151A, § 24(b), until she gets that approval.

**Board of Review
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Issue ID: N6-F84F-3KDN

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 affirm.

The claimant filed a claim for PUA benefits with the DUA, effective March 14, 2020, which was denied in a determination issued on August 11, 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 and denied PUA benefits in a decision rendered on December 24, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to show that she was authorized to work, and, thus, the claimant was disqualified under G.L. c. 151A, § 24(b). 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 allow the claimant to produce new documents to verify her work authorization status. 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 meet the eligibility requirements for PUA benefits because she is not authorized to work in the United States during the benefit year of her claim, 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 Pandemic Unemployment Assistance (PUA) effective March 21, 2020.
2. The claimant is not a citizen of the United States.

3. On May 5, 2020, the Department of Unemployment Assistance (DUA) sent the claimant a fact-finding notice, requesting documentation regarding whether she was authorized to work in the United States.
4. In response to the May 5, 2020, fact-finding notice, the claimant submitted a copy of a Brazilian passport.
5. The claimant does not have current employment authorization to work in the United States. The claimant does not have a copy of an expired authorization document.
6. The claimant submitted her application to renew her employment authorization on December 1, 2020, after her employment authorization had already expired.
7. The claimant attended a fingerprinting appointment for her employment authorization appointment on March 26, 2021.
8. The federal government has not granted the claimant an extension or renewal of her employment authorization.
9. The claimant was granted deferred action for removal status on October 27, 2020, from U.S. Citizenship and Immigration Services (USCIS), with an expiration of October 26, 2022.
10. The claimant has a Massachusetts driver's license with an expiration date of February 8, 2022.
11. On June 11, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing her that she did not meet the eligibility requirements to receive PUA benefits.
12. On August 11, 2020, the DUA sent the claimant a second Notice of Non-Monetary Issues Determination, again informing her that she did not meet the eligibility requirements to receive PUA benefits.
13. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant testified that her work authorization expired sometime in 2018 or 2019. The claimant testified that she had been granted deferred action by USCIS since 2016, which expired on August 15, 2019. The claimant testified that she applied for renewed deferred action status in July 2019. The claimant was granted renewed deferred action status effective October 27, 2020, with an expiration date of October 26, 2022.

The claimant testified that she applied for renewed work authorization on December 1, 2020. As such, it is found that the claimant applied for renewed work authorization after her prior work authorization expired. The claimant attended a fingerprint screening appointment with USCIS on March 26, 2021. The claimant testified that she had not been granted work authorization as of April 5, 2021.

The claimant's testimony and documentation are deemed credible. Although she has offered evidence of her deferred action status, the claimant did not provide other documentation showing that she is also authorized to work in the United States.

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 agree with the review examiner's legal conclusion that the claimant is not eligible for PUA benefits because she is not authorized to work in the United States during the benefit year of her claim.

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.¹ In order to qualify for PUA benefits, the claimant must show that she is available for work within the meaning of state law.²

The review examiner initially denied benefits after concluding the claimant had not established that she was legally available for work in the United States. In reaching this conclusion, the review examiner applied the state law provision under G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall . . . (b)
Be capable of, available, and actively seeking work in his usual occupation or any
other occupation for which he is reasonably fitted

As a state agency administering the unemployment insurance programs, we must also abide by U.S. Department of Labor (DOL) regulations governing eligibility for unemployment insurance. These regulations require that a non-citizen must be legally authorized to work by the appropriate U.S. agency in order to be considered "available for work." Specifically, 20 C.F.R. § 604.5 — Application —availability for work, provides, in relevant part, as follows:

(f) Alien status. To be considered available for work in the United States for a week, the alien must be legally authorized to work that week in the United States by the

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

² CARES Act, § 2102(a)(3)(A)(ii)(I).

appropriate agency of the United States government. In determining whether an alien is legally authorized to work in the United States, the State must follow the requirements of section 1137(d) of the SSA (42 U.S.C. 1320b-7(d)), which relate to verification of and determination of an alien's status.

Thus, in order to find the claimant available for work under G.L. c. 151A, § 24(b), the claimant must show that during her benefit year, she was legally authorized to work by the appropriate U.S. agency, currently the USCIS.

In this case, the claimant's PUA benefit year is March 15, 2020, through September 4, 2021. The claimant does not have current employment authorization from the USCIS. *See Consolidated Finding # 5.* The claimant testified that her prior employment authorization expired in either 2018 or 2019, before her PUA benefit year began. Although the claimant applied to renew her employment authorization in December, 2020, and attended her biometrics appointment on March 26, 2021, the USCIS has not yet granted the claimant a renewal of her employment authorization. *See Consolidated Findings ##7 and 8.*

We, therefore, conclude as a matter of law that the claimant is not authorized to work within the meaning of G.L. c. 151A § 24(b), beginning March 15, 2020.

The review examiner's decision is affirmed. The claimant is denied PUA benefits as of March 15, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 9, 2021



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.

KB/rh