

Non-citizen with Temporary Protected Status, who worked as a ride-sharing driver, presented documents from the USCIS which established he was authorized to work during his PUA benefit period.

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

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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020, which was denied in a determination dated May 27, 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 January 28, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to show that he 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 take additional evidence about the validity of the claimant's Temporary Protected Status (TPS) as a Somali and his authorization to work in the United States. 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 had not substantially and credibly proven that he was legally authorized to work in the United States during the PUA benefit year, 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 for [sic] Pandemic Unemployment (PUA) claim, effective March 15, 2020.

2. On May 27, 2020, the Department of Unemployment Assistance (DUA) issued a Notice of NonMonetary Issue Determination—Work Authorization to the claimant stating that he was not eligible for PUA benefits.
3. The claimant is not a citizen of the United States.
4. The claimant has a birth certificate from the City of [City A], stating that he was born in Somalia.
5. The claimant’s TPS status expired on March 17, 2020. He applied for a renewal in May of 2020.
6. The pandemic delayed the renewal of the claimant’s TPS status.
7. The claimant has an approval notice from USCIS, which shows that he was granted TPS status on June 10, 2021. The notice indicates that the effective date of the claimant’s TPS designation is March 18, 2020, through September 17, 2021.
8. The claimant was issued an Employment Authorization Document on June 10, 2021. It has an expiration date of September 17, 2021.
9. The category noted on the EAD is A12.
10. Because the claimant’s EAD and TPS was [sic] to expire September 17, 2021, the claimant applied for an extension on August 3, 2021.

Credibility Assessment:

The claimant provided credible evidence and testimony. The claimant submitted a valid EAD, issued on June 10, 2021, with an expiration date of September 17, 2021. In addition, the dates on the claimant’s EAD match the dates listed on the claimant’s SAVE report. The claimant also provided an approval notice from USCIS, which shows that he was granted TPS status on June 10, 2021. The notice indicates that that the claimant was granted work authorization status in March of 2020.

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 with the review examiner’s legal conclusion that the claimant was not authorized to work in the United States and therefore ineligible for PUA benefits.

The claimant in this case seeks PUA benefits, an 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 available for work within the meaning of state law.

The review examiner initially denied benefits after concluding the claimant had not established that he 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 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 his benefit year, he was legally authorized to work by the appropriate U.S. agency, currently the United States Citizenship and Immigration Service.

At his original hearing, the claimant testified he had work authorization, but needed new documents because his original designation had expired March 17, 2020. He applied for new TPS and Employment Authorization Document (EAD) records in May 2020, but delivery of those records had been delayed by the pandemic. *See* Consolidated Findings ## 5 and 6. The review examiner found that the claimant had been again granted TPS from March 18, 2020, to September 17, 2021, on June 10, 2021. *See* Consolidated Finding # 7; U.S. Citizenship and Immigration Services, “Extension of the Designation of Somalia for Temporary Protected Status” 85 Fed. Reg. 14229, (Mar. 11, 2020). Pursuant to federal law, with claimant’s TPS status came his EAD under category A12 with an expiration date of September 17, 2021. *See* ## 8 and 9; 8 U.S.C. § 1254a(a)(2).

The effective date of the claimant’s PUA claim was March 15, 2021. Consolidated Finding # 1. The PUA benefit program ended on September 4, 2021.² Because the claimant had work

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

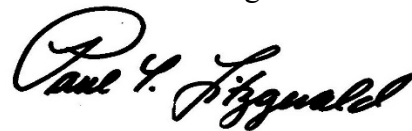
² *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), 3(b), p. 3.

authorization with his TPS status from March 15, 2020, through September 17, 2020, the claimant was authorized to work for the duration of his PUA claim.

The record before us in its entirety reflects that the claimant was authorized to work as of the effective date of his PUA claim, and that he remained so authorized through the expiration of the PUA program.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he was available to work within the meaning of G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 15, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 29, 2021



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.

MS/rh