

Although the claimant could not provide his current Massachusetts driver's license because it had been stolen and could not be replaced during the pandemic, he appeared at an in-person hearing with a multitude of documents corroborating his identity, including an expired out-of-state driver's license with his photograph, a birth certificate, lease agreement, utility bill, and a school letter addressed to him. Held he satisfied the registration and filing requirements under G.L. c. 151A, § 25(a) for PUA benefits.

**Board of Review
19 Staniford St.
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: N6-F958-KFJ2

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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective February 23, 2020, which was denied in a determination issued on June 9, 2020. 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 September 15, 2020. We accept 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 his identity as the person who filed this PUA claim and, thus, he was disqualified under G.L. c. 151A, § 25(a). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was ineligible for PUA benefits because he did not provide a valid photo I.D. or valid Social Security card, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant filed a Pandemic Unemployment Assistance (PUA) claim with an effective date of March 15, 2020.

2. On May 18, 2020, the Department of Unemployment Assistance (DUA) issued a Notice of Non-Monetary Determination – Identity Verification to the claimant, stating that he was not eligible for PUA benefits.
3. Claimant does not have valid photo identification.
4. Claimant does not have a valid social security card.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. Finding of Fact # 1 incorrectly states that the PUA claim effective date is March 15, 2020. The DUA's electronic record-keeping system for PUA benefits shows a benefit year beginning date of February 23, 2020. Also, the date of May 18, 2020 in Finding of Fact # 2 is incorrect. Exhibit 2 shows that the Notice of Non-Monetary Determination was mailed on June 9, 2020.¹ We reject Findings of Fact ## 3 and 4, because they are not supported by substantial evidence. In adopting the remaining portions of the findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to provide substantial evidence validating his identity for purposes of meeting the registration and filing requirements under G.L. c. 151A, § 25(a).

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.² In order to obtain PUA benefits, the claimant must follow many of the terms and conditions of state law that apply to claims for regular unemployment benefits.³ This includes 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.

Also under the PUA program, the Secretary of Labor, through U.S. Department of Labor (DOL) advisories, directs states to disqualify any individual who makes a material misrepresentation in order to obtain the benefit.⁴ To detect and prevent fraud, states are to use “such methods of administration as are, *within reason*, calculated (1) to detect benefits paid through error by the

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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).

² Pub. L. 116-136 (Mar. 27, 2020), § 2102.

³ See U.S. Department of Labor (DOL) Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(11)(c).

⁴ See CARES Act § 2102(h); DOL Unemployment Insurance Program Letter 16-20 (Apr. 5, 2020), 3, p. 2 and Attachment I, 13(h), p. 1-12 (UIPL 16-20); 20 C.F.R. § 625.14(i)(1)(i).

agency or through willful misrepresentation or error by the claimant or others, and (2) to deter claimants from obtaining benefits through willful misrepresentation.”⁵ (Emphasis added.)

In this case, the issue presented to the review examiner was whether the claimant could demonstrate that he was the person who filed a claim and not an imposter, who may have borrowed or stolen an identity to fraudulently collect PUA benefits. The claimant appeared in person before the review examiner. To authenticate his identity, he presented a birth certificate showing his full name and birth date of April 29, 1977, and a color photograph of a Social Security card with the same full name. Although he was unable to produce a current Massachusetts driver’s license, the claimant presented an expired Ohio driver’s license issued under the same name, same date of birth, and containing his photograph.⁶ He explained that he could not present his Massachusetts license, because his wallet was stolen and, due to pandemic-related closures at the Registry of Motor Vehicles, he could not get an appointment to replace the license prior to the hearing.⁷ To corroborate his identity, he also presented a recent utility bill with his name and home address, a letter from [School A] addressed to the same name and address, and a lease agreement with the local housing authority for that address, signed under his name with a signature that matches the one on his Ohio driver’s license.

Finding of Fact # 3 states that the claimant did not have a valid photo identification. We reject this finding, because nothing in the record suggests that the Ohio driver’s license, though expired, was invalid when issued. We also reject her Finding of Fact # 4, which asserts that the claimant does not have a valid Social Security card. There is nothing about the color photograph of the Social Security card in Exhibit 5 to suggest that it is inauthentic.

Moreover, the record contains multiple forms of identification corroborating the name, address, and age of the claimant who has requested PUA benefits. We assume that, if the photograph in the State of Ohio driver’s license did not resemble the person appearing before the review examiner at the hearing, she would have addressed this on the record or in her decision. She did not.⁸

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

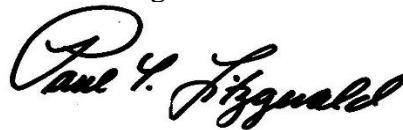
⁵ Appendix C to [20 C.F.R.] Part 625 – Standard for Fraud and Overpayment Detection, paragraph 7511.

⁶ These documents are entered into evidence as Exhibit 5. More legible copies are also in the record, though unmarked.

⁷ This testimony is also part of the unchallenged evidence before the review examiner.

⁸ We are aware that the DUA Hearings Department is requiring claimants to produce a driver’s license with an expiration date after February 1, 2020, and to bring in their Social Security card or certain 2019 tax forms filed with the Internal Revenue Service. As stated above, the Secretary of Labor directs states to use methods of administration to detect fraud that are reasonable. Where the claimant’s wallet was stolen during a pandemic and he could not readily replace it because the RMV was shut down, we think it is unreasonable to disqualify him because he produced an older photo I.D. Similarly, if the review examiner was not satisfied with the color copy of the Social Security card, it would have been more reasonable to continue the hearing so that the claimant could bring in the original rather than summarily conclude that the copied card was invalid.

The review examiner's decision is reversed. The claimant is entitled to PUA benefits for the week beginning February 23, 2020, and for subsequent weeks if otherwise eligible.



BOSTON, MASSACHUSETTS

DATE OF DECISION - October 2, 2020

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.

AB/rh