

Claimant produced multiple documents to verify her name and date of birth, which verify her identity as the person who filed a PUA claim. Board concluded the review examiner's assessment that the person appearing at the hearing did not resemble the person appearing on an expired photo I.D. card was not reasonable because it was based upon hair length and age, which are accounted for by the fact that the expired photo I.D. was five years old.

**Board of Review
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Issue ID: N6-F95H-32T6

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 March 22, 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 14, 2020. 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 PUA claim, 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 consider additional documents, which the claimant had provided to the DUA but were not considered by the review examiner in rendering her original decision. Thereafter, the review examiner reviewed the additional documents and issued her 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 was ineligible for PUA benefits because the photograph on her expired Massachusetts I.D. card did not look like the person at the hearing and the claimant had not provided any other of the requested documents after the hearing, 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 22, 2020.
2. A person alleging to be the claimant appeared at a hearing on September 21, 2020 with only a Massachusetts Identification Card issued by the Massachusetts Registry of Motor Vehicles with an expiration date of August 1, 2019.
3. The name listed on the Massachusetts Identification Card is [First Name A] [Middle Initial A] [Last Name A].
4. The date of birth listed on the Massachusetts Identification card is August 1, 1982.
5. In response to the agency's fact-finding, a photograph of a Birth Certificate with the name listed as [First Name A][Middle Name A] [Last Name B] was submitted.
6. The date of birth listed on the birth certificate copy is August 1, 1982.
7. In response to the agency's fact-finding, a photograph of a Social Security Card with the name listed as [First Name A] [Middle Name A] [Last Name A] was submitted.
8. In response to the agency's fact-finding, a photograph of a Massachusetts Department of Transitional Assistance (DTA) Card with the name listed as [First Name A] [Last Name A] was submitted.
9. In response to the agency's fact-finding, a photograph of a mailing from the DTA addressed to [First Name A] [Last Name A] was submitted.

Credibility Assessment:

The person who appeared at the September 21, 2020 hearing only brought a single document with her, the expired Massachusetts Identification Card. At the time of the hearing, the Massachusetts Identification Card had been expired for over one year. The person who appeared stated that she had additional documents in her purse in the car. Initially, the claimant stated that she intended to come back the same day with the documents in the car. The claimant then stated that she had additional documents at home that she could bring the next day. The record in the matter was left open until the end of the following day. The claimant never returned with any additional documents. The only other documentation submitted were photographs of documents that the claimant did not have with her on the day of the hearing.

The person appearing at the September 21, 2020 hearing did not resemble the photograph on the identification card. The person on the identification card is a white female with a very short haircut. The person who appeared at the hearing

was a white female with long brown hair, who appeared to be older than the photograph on the identification card. The person who appeared at the September 21, 2020 hearing appeared to be between thirty to forty years old. Facial masks were worn during the hearing over concerns over the COVID-19 virus.

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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to provide substantial evidence validating her 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.¹ 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.² 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.³ 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 agency or through willful misrepresentation or error by the claimant or others, and (2) to deter claimants from obtaining benefits through willful misrepresentation.”⁴ (Emphasis added.)

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 PUA benefits. The claimant appeared in person before the review examiner. To authenticate her identity, she showed the review examiner a Massachusetts photo ID card, which had expired on August 1, 2019. *See Consolidated Finding # 2.* During the hearing, the claimant stated that she had previously uploaded into FAST UI, the DUA's electronic record-keeping system for administering PUA benefits, a copy of her Social Security card, which the review examiner asked to see, as well as several other documents which

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

² *See* U.S. Department of Labor (DOL) Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(11)(c).

³ *See* CARES Act § 2102(h); UIPL 16-20, 3, p. 2 and Attachment I, 13(h), p. I-12; and 20 C.F.R. § 625.14(i)(1)(i).

⁴ Appendix C to [20 C.F.R.] Part 625 – Standard for Fraud and Overpayment Detection, paragraph 7511.

she did not bring with her to the hearing.⁵ For some reason, the review examiner did not have these documents before her for the hearing and left the record open so that the claimant could re-submit them. Because the claimant failed to re-submit them, the review examiner relied only upon the claimant's appearance at the hearing and the expired Massachusetts I.D. card.

We remanded this case for the review examiner to make further subsidiary findings based upon the additional documents, including color copies of a Social Security card, a copy of a birth certificate, a Massachusetts DTA Identification card, and an August 19, 2020, letter and an envelope from the DTA. As a result of considering and comparing the information presented in these additional documents, the review examiner's consolidated findings now provide additional evidence to confirm the claimant's identity. The name [First Name A] [Last Name A], [First Name A] [Middle Initial A] [Last Name A], or [First Name A] [Middle Name A] [Last Name A] appears on the DTA I.D. card and correspondence, on the expired Massachusetts I.D. card, and on the Social Security card, respectively. *See Consolidated Findings ## 3, 7, 8, and 9.* The name on the birth certificate is [First Name A] [Middle Name A] [Last Name B]. *See Consolidated Finding # 5.*⁶ The names appearing on these documents are consistent with the name used to file the claimant's PUA claim, [First Name A] [Middle Name A] [Last Name A].

The findings further provide that the birth date of August 1, 1982, which was used to file this PUA claim, appears on both the expired Massachusetts I.D. card and the birth certificate. *See Consolidated Findings ## 4 and 6.*

Finally, we asked the review examiner to consider whether there was a resemblance between the person appearing at the hearing and the person in the photograph on the expired Massachusetts I.D. card. In her credibility assessment, the review examiner notes that the person appearing during the hearing was wearing a face mask, as a required precaution against the COVID-19 virus. The review examiner explains that, although both the individual in the I.D. card photograph and the person appearing before her were white and female, there appeared to be a difference in age and length of hair. Specifically, she observed that whereas the person in the photo I.D. card had very short hair, the person appearing at the hearing had long hair. She also observed that the individual at the hearing appeared to be between 30–40 years old, older than the person in the photo I.D. card. Based upon these two factors, the review examiner concludes that the person at the hearing did not resemble the person in the expired Massachusetts I.D. card.

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*

⁵ This portion of the claimant's testimony is not explicitly incorporated into the review examiner's findings, but it is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

⁶ We also note that a letter and photo I.D. from an individual purporting to be the claimant's boyfriend, states that this was the claimant's maiden name. This information is also part of the unchallenged evidence in the record.

Boston Garden Corp. v. Board of Assessors of Boston, 383 Mass. 456, 466 (1981) (further citations omitted). We do not believe that the conclusion drawn in the review assessment is reasonable.

We start with the fact that, as the review examiner observed, both the person at the hearing and the individual in the expired Massachusetts I.D. card are white and female. We note that the expired Massachusetts I.D. card was issued in 2015.⁷ Thus, the photograph was taken at least five years ago. We can reasonably deduce that a person can grow long hair in that amount of time. Moreover, if the claimant was born on August 1, 1982, as noted on the expired I.D., then she would be 38 years old at the time she appeared at the hearing on September 21, 2020. This age is consistent with the review examiner's observation that the individual at the hearing appeared to be 30–40 years old. Simply put, the difference in hair length and age are not substantial evidence that the person at the hearing and in the older photograph are different.

Where the claimant has submitted several forms of documentary identification, which corroborate each other and the name and date of birth used to file this PUA claim, and where the image in the older photo I.D. appears to be a younger version of the individual who appeared at the hearing, we believe that the claimant has met her burden to confirm that she was 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 PUA benefits, as required under G.L. c. 151A, § 25(a).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 22, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 11, 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.

⁷ See Exhibit 1.

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