

**Where the review examiner incorrectly noted a problem with the birthdate on the claimant's U.S. passport, but accepted the validity of her MA driver's license, social security card, birth certificate and MA residence documents, the claimant satisfied the identify verification requirements of the CARES Act.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
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-FDKP-MJV3**

### 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 8, 2020, which was denied in a determination issued on June 24, 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 May 4, 2021. 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, the claimant 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 failed to verify her identity due to concerns about her U.S. passport and closed bank accounts, 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 claim for Pandemic Unemployment Assistance (PUA) effective March 08, 2020.
2. The claimant was issued a Notice of Non-Monetary Issue Determination Identity Verification dated June 24, 2020.

3. The claimant has an unexpired Driver's License, which expires on May 23, 2021, with a different address than the one on the PUA claim.
4. The claimant has a Social Security card, which has a Social Security Number (SSN) that matches the SSN on the PUA claim.
5. The claimant has a U.S. Passport, which expires on February 26, 2029.
6. The claimant has an official copy of their birth record with a birthdate that matches the birthdate on the PUA claim.
7. The claimant has two or more bank accounts that have been closed due to fraudulent activity.
8. The claimant has two printouts from one of the closed bank accounts and one letter from the closing of the other bank account. The printouts and letter both show the closure of each bank account. The letter was titled "Fraud Close Out" and informed the claimant that the bank would no longer continue all of their accounts.
9. The claimant has a utility bill and the first page of a standard lease for the address on the PUA claim.

### 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 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 findings of fact and deems 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 has failed to verify her identity.

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.<sup>1</sup> 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.<sup>2</sup> 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

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

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

order to obtain the benefit.<sup>3</sup> 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.”<sup>4</sup> (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 produced multiple documents to authenticate her identity. These were a Massachusetts driver’s license, a Social Security card, her birth certificate, a utility bill and partial lease, the validity of which were accepted by the review examiner. *See* Findings of Fact ## 3, 4, 6, and 9. The claimant also produced a U.S. passport (Exhibit 2), which is what proved to be the outcome determinative issue for the review examiner, who concluded that the passport was falsified and led to his affirming the determination. Included within the exhibits was the DUA ID Fraud Materials which contains examples of valid and fraudulent U.S. passports, marked as Exhibit 5.

In rendering his findings in this matter, the review examiner included a detailed credibility assessment. In his assessment, the review examiner concluded the claimant lacked credibility. 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). For the reasons set forth below, we believe the review examiner’s credibility assessment is unreasonable in relation to the evidence presented.

The review examiner’s explanation for rejecting the passport was, “[t]he claimant provided a U.S. Passport with an incorrect inlay, a visible binding, and a wholly incorrect date of birth in the numerical check system. The inlay appears to have the claimant’s shoulder jutting out of the inlaid picture and the border is not sufficiently inlaid into the Passport background to appear legitimate. The angles provided in the pictures do not give a visual representation of how thick or thin the Passport is in reality and the picture provided clearly show the binding of the Passport, which is commonly associated with tampering. The birthdate is correct on the details next to the picture of the claimant; however, the numerical check system fails since the Passport does not display the correct birthdate in the check numbers.”

While reasonable minds could disagree as to whether the passport photograph and binding are authentic, the review examiner especially relied on the listing of the claimant’s birthdate in the numerical check system (the row of numbers at the bottom of every U.S. passport), which he states is not displayed correctly. We disagree. An example of a U.S. passport exhibiting the same layout in the numerical check system is found on page 35 of the DUA ID Fraud Materials marked as

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

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

Exhibit 5. Specifically, as in the example passport in Exhibit 5, the numerical check system on the claimant's passport shows her birthdate is enumerated immediately after "USA" by showing, in order, the final two digits of her birth year, then the month and followed by the day.<sup>5</sup>

As support for concluding that she did not verify her identity, the review examiner also noted that her bank accounts had been closed due to fraudulent activity. *See* Findings of Fact ## 7 and 8. However, these closures by themselves, do not establish that the claimant is not the person who filed this PUA claim, particularly considering the other evidence verifying her identity. It must be further noted that the review examiner omitted acknowledging that the claimant testified that it was her informing the banks of the improper deposits which led to the closures rather than this originating from those banks.<sup>6</sup>

In sum, the claimant produced a valid Massachusetts driver's license, Social Security card, birth certificate and Massachusetts residency documents, which confirm the address and Social Security number used to file the claim. Moreover, in the conclusion and reasoning section of his decision, the review examiner noted that the person appearing before him resembled the photograph in the driver's license. We believe this evidence satisfies the claimant's burden to verify her identity.

We, therefore, conclude as a matter of law that the claimant produced substantial and credible evidence to verify her identity as the person who filed this PUA claim. 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 PUA benefits for the week beginning March 8, 2020, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 29, 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)**

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<sup>5</sup> Exhibit 2 includes the claimant's passport. While not explicitly incorporated into the review examiner's findings, Exhibits 2 and 5 are part of the unchallenged evidence introduced at the hearing and placed in the record, and they 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).

<sup>6</sup> This testimony is also part of the unchallenged evidence in the record.

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](http://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.

BGM/rh