

**Claimant failed to establish that he had work in Massachusetts in 2020 that was negatively affected by COVID-19, where review examiner concluded that the claimant failed to support his testimony that he was licensed to work as a barber in Massachusetts, advertised his business as a barber, had a lease to operate as a barber, had insurance to cover his alleged business, or filed income taxes in Massachusetts for his alleged business. He is ineligible for PUA benefits.**

**Board of Review  
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**Issue ID: N6-FJV2-MD6P**

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. Benefits were denied on the ground that the claimant had failed to establish that he was unemployed for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020.

The claimant had filed a claim for PUA benefits with the DUA, effective March 8, 2020, which was denied in a determination issued by the agency on November 24, 2020. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on February 12, 2021. The claimant sought review by the Board, which denied the appeal and affirmed the review examiner's original decision. The claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On June 9, 2021, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence, including specific documentary evidence concerning employment the claimant allegedly performed in Massachusetts in 2019 and 2020. The claimant participated in the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not present sufficient evidence to show that he lost employment in Massachusetts due to an approved COVID-19 related reason, is supported by substantial and credible evidence and is free from error of law.

After reviewing the entire record, including the recorded testimony and evidence from the hearings, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact and credibility assessment, we affirm the review examiner's decision.

## Findings of Fact

The review examiner's consolidated findings of fact and credibility assessments, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant graduated from barber school in 2018.
2. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) on April 16, 2020, which was determined to be effective March 8, 2020.
3. Since filing this claim for PUA, the claimant has not filed a claim for PUA or other unemployment benefits with any state other than the Commonwealth of Massachusetts.
4. The claimant is a resident of Rhode Island.
5. The claimant filed his claim for PUA using a Rhode Island address.
6. The claimant was not a licensed barber in Massachusetts in 2020 and has never been a licensed barber in the state of Massachusetts, as of the remand hearing date (November 8, 2021).
7. The claimant was not a licensed barber in Rhode Island in 2020 and has never been a licensed barber in the state of Rhode Island, as of the remand hearing date (November 8, 2021).
8. The claimant never sought a reciprocal barber license in the state of Massachusetts from the state of Rhode Island, or vice versa, because the claimant never held a barber license in either state.
9. The claimant is not an "apprentice barber" in the state of Massachusetts and never has been one.
10. The claimant never applied to be an apprentice barber in Massachusetts.
11. The claimant has never been licensed by the Commonwealth of Massachusetts to own or operate a barbershop within the Commonwealth of Massachusetts.
12. As of January 1, 2020, the claimant was not licensed by the Commonwealth of Massachusetts to own or operate a barbershop within the Commonwealth of Massachusetts.
13. The name of the business on the storefront located [in Massachusetts] from January 1, 2019, through April 1, 2020 was [business].

14. The claimant did not advertise a business [in Massachusetts] from January 1, 2019, through April 1, 2020.
15. Since March 2020, the claimant has not advertised for a business.
16. The claimant did not pay money to a landlord related to any business.
17. The claimant did not communicate with a landlord about the claimant returning to [Massachusetts] to resume any business activities.
18. The claimant did not have a lease agreement with a landlord related to a business.
19. The claimant did not have any appointments scheduled for January 25, 2020.
20. It is unknown how much money the claimant made on January 25, 2020, in gross or net sales.
21. The claimant does not have bank statements related to a barber business in Massachusetts.
22. Since March 2020, the claimant has not performed any business activities within the Commonwealth of Massachusetts.
23. Since March 2020, the claimant has not performed any business activities outside the Commonwealth of Massachusetts.
24. The claimant did not file income tax returns for the year 2019 with the Massachusetts Department of Revenue.
25. The claimant did not file income tax returns for the year 2020 with the Massachusetts Department of Revenue.
26. The claimant did not retain insurance for any business located [in Massachusetts].
27. The claimant was not covered by an insurance policy held by another person related to a business [in Massachusetts].
28. As of the date of the PUA hearing (November 8, 2021), the claimant was not working full-time or part-time.
29. The claimant was not engaged in a business that was affected by COVID-19.
30. The claimant did not lose income from a business as a result of COVID-19.

31. The claimant was issued a Notice of Non-Monetary Issue Determination dated November 24, 2020, informing the claimant they are not eligible for PUA benefits.
32. The claimant filed a timely appeal related to this Notice of Non-Monetary Issue Determination dated November 24, 2020.

Credibility Assessment:

The claimant failed to submit the following documents listed on the Board of Review's Remand Order: a complete copy of his federal and Massachusetts state tax returns filed for 2019 (along with copies of any 1099s and W-2s from 2019), a complete copy of his federal and Massachusetts state tax returns filed for 2020 (along with any 1099s and W-2s from 2020), a copy of his license to perform services as a barber issued by the state of Rhode Island, a copy of his license to perform services [as a barber] issued by the Commonwealth of Massachusetts, a copy of his professional license to own and operate a barbershop in the Commonwealth of Massachusetts, a copy of any documents showing that he operated a business incorporated in the Commonwealth of Massachusetts in 2019 or 2020, a copy of any and all documents showing he has paid or was billed for personal property taxes relating to his business in any city or town within the Commonwealth of Massachusetts in 2019 or 2020, a copy of the complete contract and/or lease agreement which outlines the parameters for which the claimant was authorized to do business and/or perform services [in Massachusetts], during 2019 and 2020, and any evidence of advertising for the claimant's purported business.

The claimant submitted two different copies of purported bank statements for the January through March 2020 period. The bank statements admitted into the record as exhibit 26 have multiple issues. There are nonsensical numbers used where there should be number amounts, such as, “.5 . 8” listed for “current balance.” Additionally, the dates listed are not formatted correctly. Dates on the purported statement for exhibit 26, are “0 /0” or “0/09.” The claimant submitted revised copies of these bank statements where the formatting errors appear to be corrected. There are also differences in the amounts of each credit or deposit amount between the statements for each applicable month, given that one statement has standardized numbers and one does not. Given these differences, inconsistencies, and formatting errors, these bank statements are deemed to be inauthentic evidence that the claimant was conducting business in Massachusetts in 2020, and therefore are not substantial and credible evidence that the claimant was conducting his business in Massachusetts.

Although the claimant testified that he advertised his business on Instagram, he failed to provide documentary evidence of any business advertising in 2019, 2020, or thereafter from any source. In the remand order, the claimant was specifically asked to submit any evidence of business advertisement from 2019 or

2020. Since the claimant failed to submit the requested documentation, it is concluded that the claimant was not advertising a business in Massachusetts.

The claimant asserted that he was operating as a barber physically in Massachusetts in 2020. As a preliminary matter, the claimant is not a licensed barber in Massachusetts or Rhode Island and has never been a licensed barber in either of these states. Although the claimant asserted that he was an “apprentice barber,” he did not have any documentation from the Commonwealth of Massachusetts licensing board to confirm this. The claimant did graduate from barber school in 2018, but this is not proof of licensing or of his work in Massachusetts. Although the claimant alluded to an application that he was in the process of filling out [sic] to become a barber, he provided no documentation that this was ever filed. Therefore, it is concluded that the claimant was not a licensed barber, in any form, in Massachusetts or Rhode Island.

The claimant alleged that he had a landlord tenant relationship with an individual who he rented a barber chair from [in Massachusetts]. The claimant did not submit any written communication with his landlord for consideration, such as emails or text messages. The claimant had no documentation to show that he was ever paying rent for a barber’s chair in Massachusetts. As a business owner, it would be critical to maintain documentation of an expense, such as rent. The claimant submitted what appear to be checks issued in the name of a business, but it is unknown why the claimant would not use these checks to pay rent for his purported business in Massachusetts. The claimant did submit a signed letter purported to be from the person the claimant rented his barber chair from the landlord. The landlord statement is not [signed under oath or] notarized. This person did not testify at the hearing to answer to the assertions in the letter, even though the Board of Review’s Remand Memorandum encouraged the claimant to have this purported landlord available for testimony. The claimant also stated two different amounts that he paid for rent each month. When asked why the claimant stated a different amount than what was listed in the letter from the purported landlord, the claimant did not realize the amount he stated varied from the amount listed in the landlord’s letter, and subsequently affirmed that the amount listed in the landlord letter was the correct amount. It is unlikely that the claimant would not know what his monthly rent amount was for his business. Therefore, it is concluded that the claimant did not rent a barber chair or have any kind of lease agreement with a barbershop. The claimant testified that he did not maintain any kind of business insurance for his barber business, but rather that he was covered by the insurance from the person from whom he rented his barber chair. There is no credible evidence to support the claimant’s assertion that he was on the landlord’s insurance policy. The claimant did not have a copy of any insurance policy to submit. It is unlikely that a business owner covered by any insurance policy would not have a copy of that policy. Therefore, it is concluded that the claimant did not have insurance related to a business in Massachusetts.

Although the claimant did submit what [appears] to be sale transaction summaries, there is no evidence that these credit card transactions were in any way linked to a business operation conducted in Massachusetts.

At the original hearing, January 27, 2021, the claimant testified that the location where he was working was closed in 2020 and never reopened. At the remand hearing, on November 8, 2021, the claimant testified that the location where he was working closed, reopened sometime in 2020, but the claimant was unable to resume working there because there was not enough space for him to work there with social distancing. The claimant's testimony was inconsistent between the two hearings regarding the time period of 2020, despite both hearings occurring in 2021, and therefore, his testimony regarding why he was unable to continue working is not credible and [has] no indicia of reliability. Furthermore, the claimant testified at the remand hearing the landlord moved and opened a new location in Rhode Island and that the claimant was waiting for his station to be built so he could resume working there. However, this is not logical, because the claimant is not a licensed barber in Rhode Island, so he would be unable to work in Rhode Island as a barber. As such, where the claimant's testimony regarding the closing and reopening of businesses in Massachusetts and Rhode Island was inconsistent, illogical, and vague, it is concluded that the claimant's testimony regarding the closing of the business, his inability to return to work, and his plan to begin working in Rhode Island sometime in the future is not credible.

The claimant submitted two different copies of his 2019 Schedule C form. The copy submitted for the original hearing did not have a business address listed, indicating that this document does not demonstrate any connection to the business operating in the Commonwealth of Massachusetts. At the remand hearing, the claimant produced a different copy of his 2019 Schedule C form, including a Massachusetts address. The 2019 Schedule C Forms that were produced list the claimant's business as a "babershop" [sic]. Given that the documents appear to have changed between the two hearing dates, these are not considered to be authentic documents. The claimant also failed to supply complete copies of his 2019 and 2020 Massachusetts state and federal tax returns. The claimant submitted a Massachusetts M-8453 Form, which is the only document the claimant submitted linking his purported business to Massachusetts. Nothing on this M-8453 form indicates that the claimant actually filed his taxes in Massachusetts related to a business. The claimant did submit a personal bank statement which showed a payment to the Massachusetts Department of Revenue. There is no link to the claimant's purported business and this payment, as it was made from a personal bank account and the claimant did not submit a corresponding payment voucher for the Commonwealth of Massachusetts. The claimant did not supply the 2019 or 2020 Massachusetts state tax returns to accompany this document.

Given the totality of the described above evidence, the claimant's inconsistent testimony, his illogical assertions, his failure to produce requested documents, and also where the claimant's representative coached him at the remand hearing—

including an instance where the claimant called out to his attorney to “help [him] out” when pressed for information, it is concluded the claimant’s contention that he was engaged in—and lost income from—a business that was affected by COVID-19 is not credible.

### 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 believe that the review examiner’s consolidated findings of fact and credibility assessment support the original conclusion that the claimant is not entitled to PUA benefits.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under § 2102 of the CARES Act of 2020 and administered by the U.S. Secretary of Labor.<sup>1</sup> In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act. Among the requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that he is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). Further, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.<sup>2</sup>

After the Board affirmed the review examiner’s decision to deny benefits, the claimant appealed to the District Court, which remanded the case to the DUA for an additional hearing to take additional testimony and evidence regarding the claimant’s alleged work as a barber in Massachusetts and, thus, whether he is eligible for benefits because he was unable to work due to the COVID-19 public health emergency.

After remand, the review examiner found that the claimant was not engaged in a business that was affected by COVID-19, and he did not lose income from a business as a result of COVID-19. *See Consolidated Findings ## 29–30.*

At the outset, the review examiner’s consolidated findings rejected the claimant’s contention that he had been operating a barber business in Massachusetts prior to being forced to shut down because of the pandemic because he was not a licensed barber in Massachusetts in 2020 and was not a licensed barber here as of the date of the remand hearing convened on November 8, 2021 (Consolidated Finding # 6); he was not a licensed barber in his home state of Rhode Island in 2020, and was not a licensed barber there as of the date of the remand hearing (Consolidated Finding # 7); he never sought a reciprocal barber license in Massachusetts from Rhode Island (or vice versa) because he has never held a barber license in either state (Consolidated Finding # 8);

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

<sup>2</sup> *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

he is not an “apprentice barber” in Massachusetts, has never been one, and has never applied to be one (Consolidated Findings ## 9–10); and he has never been licensed to own or operate a barbershop in Massachusetts as of January 1, 2020 (Consolidated Findings ## 11–12).

Moreover, the review examiner found that, despite the claimant’s claim at the initial hearing, the claimant did not advertise a business in Massachusetts (Consolidated Findings ## 14–15). The review examiner also found the claimant did not have a lease and did not pay rent to a landlord to operate his alleged business (Consolidated Findings ## 16, 18); he did not file income tax returns for 2019 or 2020 with the Commonwealth of Massachusetts<sup>3</sup> (Consolidated Findings ## 24–25); and he did not retain any insurance for his alleged business (Consolidated Findings ## 26–27).

The review examiner made an extremely detailed credibility assessment regarding the claimant’s representations about his alleged work in Massachusetts. After carefully reviewing all of the evidence presented (as well as the evidence requested but not provided), she summarized the totality of the evidence before her, stating that “the claimant’s inconsistent testimony, his illogical assertions, his failure to produce requested documents, and also where the claimant’s representative coached him at the remand hearing — including an instance where the claimant called out to his attorney to ‘help [him] out’ when pressed for information, it is concluded the claimant’s contention that he was engaged in — and lost income from — a business that was affected by COVID-19 is not credible.” 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). We believe her assessment is reasonable in relation to the evidence presented.

The review examiner’s findings and credibility assessment establish that the claimant did not lose employment in Massachusetts in 2020 as a direct result of the COVID-19 emergency.

We, therefore, conclude as a matter of law that the claimant has not his burden to show that he was out of work in Massachusetts for one of the eligibility reasons listed under § 2102(a)(3)(A)(ii)(I) of the CARES Act.

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<sup>3</sup> In addition to the review examiner’s very detailed credibility assessment, we note that some of the tax documents provided by the claimant appear to be internally inconsistent and, thus, inauthentic. Specifically, the claimant produced a document purporting to be Massachusetts Form M-8453, showing that he allegedly earned \$21,862.00 in 2020 and owed \$856.00 in income tax. *See* Remand Exhibit 24. However, the 2020 Form PV he also produced shows he allegedly owed \$865.00, not \$856.00. *See* Remand Exhibit 25. Further, the 2020 federal Schedule C that he produced reports gross income of \$5,608.00 in 2020, not the \$21,862.00 reflected on his alleged 2020 Form M-8453. *See* Remand Exhibit 29. Finally, we note that the document purporting to be the claimant’s 2019 Form M-8453 shows alleged wages of \$21,420.00 for the entire year of 2019 — fully \$442.00 less than he alleged that he earned in 2020, when his alleged business was supposedly closed in March of 2020. *Compare* Remand Exhibits 21 and 24. 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).



The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning March 8, 2020.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 13, 2022**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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](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.

JPCA/rh