

The claimant worked as a nanny for a family in Massachusetts until her children’s school transitioned to remote learning due to the COVID-19 pandemic. She was therefore in unemployment for a listed COVID-19 reason under CARES Act, § 2102(a)(3)(A)(ii)(I)(dd), and eligible for PUA benefits until she returned to work in October, 2020.

**Board of Review
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Issue ID: N6-FJV3-K8JH

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 15, 2020, which was denied in a determination issued on December 8, 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 13, 2021. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On September 28, 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 pertaining to the claimant’s employment during the 2020 calendar year. The claimant attended the remand hearings. 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 did not present credible evidence showing she was working in Massachusetts in 2020 when her work was impacted by the COVID-19 pandemic, 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 Benefits (PUA) with an effective date of March 15, 2020.
2. The claimant filed the PUA claim using her New Hampshire address.

3. The claimant and her husband moved to the United States from Venezuela in 2018.
4. The claimant's first language is Spanish.
5. Initially, the claimant and her husband lived in [Town A], Massachusetts with relatives of the husband until the claimant moved to [Town B], Massachusetts in 2020. The claimant lived in [Town B], Massachusetts until May 15, 2020.
6. On May 16, 2020, the claimant moved to [Town C], New Hampshire, where she has lived continuously until the date of the hearing. The claimant has a "Tenancy at Will Agreement" (lease) dated May 16, 2020 listing the address in New Hampshire. The claimant resides at the same address that is listed on the lease.
7. The claimant received her U.S. Work Authorization on December 16, 2019.
8. The claimant communicated with the [X] family about being a nanny to the 3-year-old son. The only member of the [X] family who spoke Spanish was the mother, Ms. [X]. The claimant primarily communicated with Ms. [X] about the employment.
9. In late December 2019, the claimant participated in a telephone interview with Ms. [X] for the nanny position.
10. Shortly thereafter, a zoom conference occurred between the claimant, Ms. [X], and the son for a more in-depth interview and discussion of the nanny position. As a result of the zoom conference, the claimant was hired for the position.
11. The claimant started to work for Ms. [X] on or about January 6, 2020 in [Town D], Massachusetts.
12. Ms. [X] asked the claimant to submit a work plan for the week beginning Monday, January 20, 2020.
13. On Friday, January 17, 2020, the claimant submitted the requested work plan to Ms. [X] outlining activities for Monday to Friday the following week which included working on recognizing numbers and letters as well as visits to the museum for children and activities at a local library.
14. The claimant has the written exchange between herself and Ms. [X] dated January 17, 2020 of her work plan for the week of January 20, 2020.
15. The claimant does not have a written contract or agreement showing that she agreed to begin working with the family in January 2020.

16. During the week beginning January 20, 2020, the claimant worked partial days as a nanny to the son on Monday, Wednesday, Thursday and Friday in [Town D], Massachusetts.
17. In addition to occasionally watching over the son, the claimant's primary responsibilities were to teach the son Spanish and to take him to places such as libraries and museums.
18. The primary methods of communication between the claimant and Ms. [X] were phone calls, emails, text messages, and in-person conversations when the claimant came to pick up the son.
19. The email address for Ms. [X] is her last name at gmail.com.
20. The claimant was paid \$415 per week in cash for her nanny services.
21. On March 13, 2020, the claimant could not continue working for the [X] family because the claimant has 2 children of her own that the claimant needed to care for once their schools closed due to the COVID-19 pandemic.
22. The [X] family traveled to Denmark approximately one month later (April 2020) when airports reopened.
23. The claimant worked a total of 10 weeks for the [X] family between the week beginning January 6, 2020 and the week ending March 14, 2020 and earned a total of \$4,150. The claimant performed this work in Massachusetts.
24. In February 2021, the claimant requested by electronic communication that Ms. [X] provide a letter confirming the claimant's employment as a nanny for the period of January 6, 2020 to March 13, 2020. The letter was requested for the sole purpose of the hearing.
25. Between February 2021 and May 19, 2021, the claimant made numerous additional requests by phone and text message to Ms. [X] for the letter. Sometimes, the claimant got through to speak with Ms. [X] or to leave messages; other times, she did not.
26. The [X] family returned to the United States of America in late March or early April, 2021.
27. On or about May 19, 2021, the claimant visited Ms. [X] in person to pick up the letter.
28. After receiving the May 19, 2021 letter, the claimant asked Ms. [X] to provide a 2020 Form 1099 showing the claimant's wages. Initially, Ms. [X] did not provide the requested 1099.

29. In early June 2021, the claimant went personally to Ms. [X] to ask for the 1099. Ms. [X] was reluctant to give the 1099.
30. Ms. [X] gave the claimant a handwritten 2020 1099-NEC from the [X] family reporting nonemployee compensation of \$4,150. The handwriting on the top listing the employer was written by Ms. [X]. The claimant filled in the bottom of the form listing the payee and compensation. Neither the [X] family nor the claimant filed the 1099-NEC with the IRS as required by law.
31. The claimant [] does not have paystubs verifying her employment with the [X] family.
32. The claimant began working as an independent contractor providing delivery driver services for an online retail service on or about October 12, 2020. The claimant worked between 15 and 20 hours each week earning \$15.00 per hour. The claimant worked for the online retail service company until the end of 2020 and the claimant is not still working for the online retail company. The claimant performed this work in Massachusetts.
33. In 2021 while living in New Hampshire, the claimant received a 2020-1099-NEC from the online retail service listing \$2,025.50 in non-employee compensation. The 2020 1099-NEC listed the claimant's former address in [Town A], Massachusetts because that was her address still listed on her driver's license, which the claimant used to fill out hiring paperwork with the online retail service.
34. The claimant has a 2020 federal joint tax return including a Schedule C for the claimant. On the claimant's Schedule C, she describes her principal business as taxi and delivery and reports only the income from the online retail store. The claimant did not report income from nannying in 2020.
35. The claimant does not have a 2020 tax return for Massachusetts or New Hampshire.
36. At no time did the claimant incorporate any business with the Secretary of State in New Hampshire or Massachusetts. In 2019 and 2020, the claimant was not the owner of any business nor was she a registered officer of any business in Massachusetts or New Hampshire.

Credibility Assessment:

The claimant was not responsive to the production of many of the documents requested by the Board of Review. Additionally, the 1099-NEC partially filled out by Ms. [X] and partially filled out by the claimant was admittedly prepared solely for the PUA hearing and not for tax purposes. The claimant did not provide 2020 state tax returns for Massachusetts or New Hampshire, nor did she report the nannying income on her 2020 federal taxes. However, this examiner does not find

these shortcomings so significant as to negate the credibility of the testimony and documentation she did produce.

The claimant's testimony regarding the telephone call and zoom meeting in late December 2019 during which she was offered the nanny position, and her testimony that she commenced work on Monday, January 6, 2020, is credible. This testimony was detailed and specific. The dates of employment the claimant provided were corroborated by the notarized letter from Ms. [X] to the claimant dated May 19, 2021.

The written exchange between the claimant and Ms. [X] on January 17, 2020 setting forth the work plan for the week beginning January 20, 2020 is deemed credible. It corroborated and was consistent with the claimant's testimony about her job duties.

This testimony and evidence established to this examiner that the claimant was working as a nanny for the [X] family in Massachusetts in early 2020. The claimant's testimony that she could not continue this work because she had to care for her own children once their school closed due to COVID-19 is also credited.

The May 19, 2021, letter and the 2020 1099-NEC were consistent in the amount of money the claimant was paid for nannying services.

The claimant's discrepancy in her addresses on the 1099 NEC from the online retail service was plausible and consistent with what one might expect for a family in the process of moving to the United States and getting settled and having a former address on a driver's license used to provide to a new employer

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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant did not present sufficient evidence to show she was working in Massachusetts when her work was impacted by the COVID-19 pandemic.

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.¹ In order to qualify for PUA benefits, the claimant must show that she is a covered individual within the meaning of the CARES Act. Among the listed criteria for eligibility is § 2102(a)(3)(A)(ii)(I)(dd), which states that "a child or other household member for which the [claimant] has primary caregiving responsibility is unable to attend school or another facility that

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

is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work.” Further, claimants must file for PUA benefits in the state where they were working at the time they became unemployed.² Therefore, in order to be eligible for benefits, the claimant must show that she had work in Massachusetts that was negatively impacted by the COVID-19 pandemic.

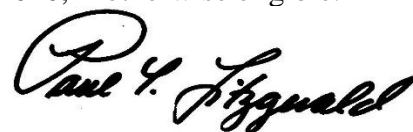
During both hearings, the claimant testified that she was unable to continue working as a nanny for a family in Massachusetts due to the onset of the COVID-19 public health emergency. The review examiner accepted this testimony as credible based on evidence of correspondence between the claimant and her employer regarding her job responsibilities as well as tax documentation verifying that the claimant had performed wage-earning services in Massachusetts. *See Consolidated Findings ## 8, 10, 14, 18, 20, 23, and 30.* 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). Upon review of the record, we see no reason to disturb the review examiner’s credibility assessment.

The claimant worked as a nanny for a family in Massachusetts beginning in January, 2020. Consolidated Findings ## 10, 11, 16, and 17. However, the claimant was unable to continue working for this family when her two children transitioned to remote learning because of the COVID-19 pandemic on March 13, 2020. Consolidated Finding # 21. However, as the claimant was able to return to work for another employer on or around October 12, 2020, the record indicates that her availability for work was no longer impacted by her children’s school situation as of that date. *See Consolidated Finding # 32.*

We, therefore, conclude as a matter of law that the claimant has met her burden to show that the effects of the COVID-19 public health emergency prevented the claimant from continuing to work in Massachusetts through October 11, 2020, and she was therefore in unemployment within the meaning of the CARES Act, § 2102(a)(3)(A)(ii)(I)(dd), during that period.

The review examiner’s decision is reversed. The claimant is entitled to receive PUA benefits for the period beginning March 15, 2020, through October 11, 2020, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 21, 2022



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

² *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.

**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.

LSW/rh