

The claimant did not provide credible documentation establishing that he lost employment in Massachusetts as a direct result of the COVID-19 emergency. He is not eligible for PUA benefits.

**Board of Review
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Issue ID: N6-FJV5-6K4P

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 affirm.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020, which was denied in a determination issued on November 19, 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 January 20, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined 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, and, thus, the claimant was not eligible for PUA benefits. 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 obtain additional evidence pertaining to the claimant's employment status in 2020. The claimant participated in the remand hearing. Thereafter, the review examiner 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 did not present sufficient evidence to show that he was out of work due to an approved COVID-19 related reason, 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), which was determined to be effective March 15, 2020.

2. Prior to filing for benefits, the claimant worked intermittently between school semesters as a cook/shift waiter at a sandwich shop in Massachusetts (First shop). The last day he worked was May 23rd, 2019.
3. He left the First shop in order to pursue a job at a different sandwich shop (Second shop). However, he lost this opportunity because, on what was supposed to be his first day of employment, he needed to be hospitalized at a facility in Rhode Island on June 13, 2019.
4. The claimant was again hospitalized at a Behavioral health facility in Arizona between September 28, 2019, and October 11, 2019. He was cleared to work without restriction after he was released. He had still not returned to Massachusetts.
5. The claimant was enrolled as a full-time student at a university in Arizona from January 13, 2020 to May 11, 2020. The claimant's university offered remote learning for the Spring 2020 and Fall 2020 semesters.
6. On or around March 7, 2020, the claimant was physically in Arizona. He had not booked a flight or otherwise prepared to travel to Massachusetts.
7. The claimant was not offered a job at a restaurant, which was supposed to begin on March 14, 2020.
8. Due to the emerging COVID-19 pandemic emergency, restaurants in Massachusetts were closed on March 23, 2020. When the restaurants did open to customers, they opened in a limited capacity.
9. The claimant was hospitalized at a facility in Massachusetts from October 29, 2020 to November 6, 2020. During the time he was hospitalized, he still had not worked since May 23, 2019, and he was collecting unemployment benefits.

Credibility Assessment:

The claimant testified that he was offered a position at a sandwich shop franchise in [Town A], MA that was to start on March 14, 2020, and end in August 2020, before the start of his fall semester at a university in Arizona. To support his testimony, the claimant provided a letter from his manager. The letter was prepared for this hearing and for the purpose of qualifying for PUA benefits. Even though this letter was prepared for the hearing, the manager never states that a job offer was rescinded due to a [sic] COVID-19. The letter simply states the reason as sales were down, so she was unable to take on another employee. In addition, the letter stated that in January of 2020, she was able to offer him a position because another employee was retiring. However, this timeline is contradictory to the alleged March, 2020 text message chain the claimant provided for the record. In those messages, allegedly from March of 2020 (not January), the claimant demonstrated surprise about the other employee's retirement plans by responding "oh she did"

after being told about the retirement, indicating that he first heard about it in March of 2020. Unless two employees retired in a three-month period, the timing of events is inconsistent with the documentation. Thus, the letter offered by the claimant from the manager was not accepted as credible and an authentic indication that he was offered a job which was to begin in March of 2020, and which did not move forward due to COVID-19.

The claimant offered for the record the above-mentioned series of text messages purporting to represent his rescission conversation with his manager. However, they appear either to be referring to a different time period or they are missing dates and times. Therefore, they cannot be properly attributed to the conversation the claimant is representing. In addition to the fact that none of the texts show a date of March 7, 2020, when the alleged text conversation took place, one of the provided texts begins with "Hello it's [claimant name]" which is represented by white text bubbles and is oriented on the left side of the text history, but then suddenly his texts are represented by blue bubbles and switched to the right side of the text chain. When asked about this disparity, the claimant stated that he "had no idea what happened." It is not credible that the claimant's phone changed itself and how it was oriented. Therefore, this evidence is not a credible representation of the conversation he allegedly had on March 7, 2020 with his prospective employer. Accordingly, the claimant was unable to provide credible and authentic contemporaneous evidence of an offer and/or rescission of employment in January or March of 2020.

Further, the claimant was physically in Arizona from the start of his claim which began the week ending March 21, 2020. He testified that after receiving the alleged text message from his prospective employer on or around March 7, 2020, he decided not to return to Massachusetts. According to his testimony, he had not even purchased his plane tickets at the time this alleged job rescission text message occurred, a mere 5 days before he was supposed to start his job in Massachusetts. It is not credible that he decided, in the moment that his offer of employment was allegedly rescinded on March 7, 2020, to not return to Massachusetts. The fact that he had not even purchased his tickets to fly to Massachusetts--for a job that was to start a mere 5 days after his alleged offer was rescinded--tends to show that he had no intention of returning to Massachusetts to work and that he did not have a *bona fide* job offer in place.

The claimant provided documents that show that he was enrolled in school for the fall 2020 semester and had the intention to attend school at his Arizona college starting in August of 2020. It is not clear from the record if the claimant would have attended school remotely from Massachusetts or in Arizona, where he resides for part of the year. According to his testimony, the claimant only worked during scheduled school breaks, including spring break, summer break, and the winter/Christmas break. However, the claimant continuously certified for benefits into May of 2021, including time periods when he normally would not have been working because he was attending school full-time and during the time period between October 27, 2020, and November 6, 2020, when the claimant was

hospitalized and would not have been able and available to work. This information further detracts from the claimant's credibility.

Other aspects of the record also detract from the claimant's credibility. The claimant submitted for the record alleged W-2 tax documents ranging from the years 2014 to 2018 to demonstrate his work history. However, these documents do not appear to be authentic. The claimant's 2014 W-2 states that his income was \$5,654.24 and the following W-2 tax documents, including 2015, 2016, 2017, and 2018, show the exact same income. It is incredibly unlikely that the claimant made identical income for five years in a row. Further, he provided for the record a digital record of his paystubs which show that he made different wage amounts for each pay period. If they were the exact same wage for every week, it would tend to show his identical yearly income over five years could be possible, but that is not the case. Thus, it appears that the claimant has created documentation for the purpose of his appeal, in order to get PUA benefits.

In conclusion, the claimant's testimony that he is out of work due to COVID-19 is not deemed credible. The record lacks consistent and logical testimony about his work history and job offers and contemporaneous documentation of his alleged offer and rescission of a job in the first quarter of 2020.

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.

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 he is a covered individual within the meaning of the CARES Act. At a minimum, the claimant must show that he was unemployed, partially unemployed, or unable or unavailable to work for a listed COVID-19 reason under the CARES Act. *See* § 2102(a)(3)(A)(ii)(I); U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(a)–(k), p. I-4 – I-6.

After remand, the review examiner found that the claimant had not worked since May 23, 2019, and he was not offered employment in Massachusetts in 2020. Based on these findings, we conclude that the claimant did not lose employment in 2020 as a direct result of the COVID-19 emergency. Thus, the claimant has not met the criteria for PUA eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I) of the CARES Act.

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

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

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning March 15, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 13, 2021



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

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.

SVL/rh