

The claimant presented documentary evidence showing that she had a genuine offer of work from a company in Massachusetts that was scheduled to start mid-March 2020. This, in combination with her uncontested testimony, was sufficient evidence to show that she was scheduled to start work in Massachusetts, but was unable to do so as a result of the COVID-19 pandemic.

**Board of Review
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Issue ID: N6-FJV6-KNFD

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 we reverse.

The claimant filed a claim for PUA benefits with the DUA, effective March 8, 2020, which was denied in a determination issued on October 14, 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 February 22, 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 she 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. 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 provide credible evidence that she was scheduled to start a job in Massachusetts but was unable to do so as a result of 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 findings of fact and are set forth below in their entirety:

1. The claimant filed a claim for PUA benefits, with an effective date of March 8, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. The claimant has a valid New Hampshire driver's license issued July 25, 2019.

3. The claimant has a [Pharmacy A] record from January 1, 2019 to December 31, 2019, showing a [Town A], Massachusetts address.
4. The claimant has several letters from Massachusetts Department of Transitional Assistance showing a [Town B], Massachusetts address.
5. The claimant has no authentic documentation showing that she performed services in Massachusetts in 2019 and/or 2020.
6. On October 14, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive benefits beginning the week ending February 8, 2020.
7. The claimant appealed the DUA's determination.

Ruling of the Board

In accordance with our statutory obligation, we review 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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to show that she was unemployed for an approved COVID-19 reason.

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. An eligible COVID-19 listed reason under the CARES Act at § 2102(a)(3)(A)(ii)(I)(gg), is that an individual will be eligible for PUA benefits if they were "scheduled to commence employment and d[id] not have a job or [were] unable to reach the job as a direct result of the COVID-19 public health emergency."

During the hearing, the claimant testified that she had accepted an offer of employment from a company in Massachusetts that was later rescinded due to the impact of the COVID-19 pandemic. Assuming the claimant's testimony was the extent of the evidence presented, it would not be unreasonable for the review examiner to conclude that such testimony, by itself, was not substantial evidence. *See McDonald v. Dir. Of Division of Employment Security*, 396 Mass. 468, 470 (1986) (a review examiner is not required to believe self-serving, unsupported, evidence, even if it is uncontroverted by other evidence). But in this case, the record includes more.

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

In addition to her testimony, the claimant provided the review examiner with an employment offer letter from a Massachusetts company, which was admitted into evidence as Exhibit 2.² The review examiner rejected this document as 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). "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). Upon review of the entire record, we believe the review examiner's assessment is unreasonable in relation to the evidence presented.

The review examiner rejected Exhibit 2 as not credible on the grounds that the offer letter did not identify a firm start date for the claimant or include detailed information about the claimant's benefits or compensation. However, the letter explicitly states that the claimant must accept the position offered no later than March 7, 2020, and twice specifies that she was to start her position no later than March 14, 2020. The letter further identifies the claimant's rate of compensation, job title, job duties, supervisor, work location, and defines her contractual relationship with the employer. As such, we believe this reason for the review examiner's credibility assessment is inconsistent with the evidence of record.

The review examiner further found the letter not credible because he believed it was unusual for an office assistant to receive a salary rather than being compensated with an hourly rate. However, employers may choose to compensate their office assistants in a variety of ways based on their individual business needs, and the review examiner did not identify any specific evidence in the record suggesting that it would be unusual for this employer to make their office assistant a salaried position. As such, we find this rationale unconvincing.

Finally, the review examiner found the letter not credible because it contained a single typographical error. However, the letter contains specific details about salary, job title, job duties, and conditions of employment and is also signed by the manager and owner of the company, all of which is consistent with a genuine offer letter. In the absence of any specific evidence detracting from the substance of the letter, we do not believe that a single typographical error reasonably throws into question the credibility of the letter. Therefore, we conclude that the review examiner's credibility assessment is unreasonable in relation to the record.

The claimant testified that she had a genuine offer of work for a company in Massachusetts that was later withdrawn due to the COVID-19 pandemic and presented credible documentary evidence verifying that she had received such an offer. Given this evidence, we are satisfied that the claimant was unemployed as a result of the listed reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg).

² This document, while not explicitly incorporated into the review examiner's findings, 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).

We, therefore, conclude as a matter of law the claimant has shown that she is unemployed due to an approved COVID-19 reason under the CARES Act.

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 8, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 3, 2021



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.

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