

Claimant alleges he was working as a site surveyor in 2020, paid in cash for his work, and that he was unable to perform services due to COVID-19 causing entry limitation into building sites. However, the claimant failed to provide any evidence of his work in early 2020 prior to the COVID-19 pandemic outbreak. He is not eligible for PUA benefits.

**Board of Review
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Issue ID: N6-FJV7-4D8V

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 September 16, 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 benefits in a decision rendered on February 19, 2021. We accept the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to establish that he worked in Massachusetts in early 2020 and was out of work for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and, thus, he 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 afford the claimant an opportunity to present further evidence that he was working in 2020 and that his work was affected by COVID-19. The claimant attended the remand hearing. 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 establish that he was out of work due to a COVID-19 reason, is supported by substantial and credible evidence and is free from error of law, where the claimant did not produce credible documentary evidence demonstrating loss of his site surveying work in 2020.

Findings of Fact

The review examiner's findings of fact and credibility assessment are set forth below in their entirety:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) with an effective date of March 15, 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 filed the PUA claim using a New Hampshire address.
3. The claimant is a site surveyor and laborer.
4. The claimant has no physical address or mailing address for his self-employment work.
5. The claimant filed a 2020 tax return. The return was filed with a “married filing separately” status. No Schedule C was included in the tax return. The only income listed on the 2020 taxes are Massachusetts unemployment compensation. The claimant does not have a 2019 tax return.
6. The claimant has no bank records, receipts, or other documentation showing that he was paid for work performed in Massachusetts in 2019 or 2020, whether prior to the start of COVID-10 pandemic or after.
7. The claimant has no documentation showing that he had work that was affected by COVID-19.
8. The claimant filed for PUA benefits because they became available, and he needed money to support his household.
9. The claimant married [Name A] in November 2019 and her former name is [Name B].
10. [Company A] is the claimant’s wife’s business. The claimant is not involved in it.
11. The claimant was the owner of [Company B]. It has not been active since approximately 2009.
12. On September 25, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing [him] that [he] was not eligible to receive benefits beginning the week ending February 8, 2020. The claimant appealed the DUA’s determination.

Credibility Assessment:

The claimant’s testimony about working prior to the pandemic and losing work due to the pandemic was not credible. The claimant submitted a 2020 married filing separately tax return. The only income listed is unemployment compensation. Also, the claimant could not recall the name of the company that allegedly paid him for

work done in Massachusetts. The claimant was also unable to produce any documentation to support that he was paid for services performed in Massachusetts.

The claimant did not provide his 2019 tax return or produce evidence that Forms 4868 and/or M-4868 were filed. The claimant did not provide any United States mail, utility bills, invoices, bank statements, or other documents to support the claimant's contention that he was working in Massachusetts in early 2020 and that this employment was affected by the COVID-19 pandemic beginning in March of 2020.

The claimant was unable to show any work orders prior to August 14, 2020. The submitted work orders, which were part of the underlying record, do not specify their source. The claimant testified that he began work a few days before the pandemic, yet he has no documentation that supports this testimony, not even text messages, phone records, or any documentation from the company that hired him.

The claimant's testimony that "he needed money to come into the house" because he had several children, the lack of documentary evidence of any work, and lack of any reported work income the 2020 tax return detract from the claimant's overall credibility and his testimony that he had work a few days prior to the start of the pandemic. It is noteworthy that the claimant had notice of the documents the Board requested him to submit for the remand hearing to support his claim, yet he did not submit any of those documents other than the 2020 tax return. He was given an additional three (3) business days to submit additional documents and failed to do so. He was told several times on the record that these documents were very important to his claim.

The Board's remand order requested information about the claimant's wife, her business, and his prior business. Findings of fact were made on those issues.

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 deem 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 agree with the review examiner's legal conclusion that the claimant failed to meet his burden to show he was working in 2020 at the time he was allegedly unable to provide services due to the COVID-19 outbreak and that he was out of work due to a COVID-19 listed 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

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

order to qualify for PUA, 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 was out of work for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). Among the criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk), is self-employed individuals who experience a significant diminution of their customary services because of COVID-19 public health emergency.² Further, a claimant must file for PUA benefits in the state where he was working at the time he became unemployed.³ Therefore, in order to be eligible for benefits in Massachusetts, the claimant must show that he had work in Massachusetts and was out of work for a listed COVID-19 reason under the CARES Act.

In this case, the claimant has filed a claim for PUA benefits, effective March 15, 2020. Thus, we consider whether he has shown that, at the time the claimant filed the claim, he became unemployed due to the COVID-19 pandemic. The claimant testified that he is a site surveyor for a construction company located in [City A], Massachusetts, and that due to the COVID-19 outbreak in March 2020, he was unable to enter into buildings to perform site surveys.⁴ However, the claimant failed to present documentation showing that he was performing site survey services in 2019 or in 2020, prior to the COVID-19 pandemic, and that he was out of such work due to COVID-19 in March 2020. *See Consolidated Findings of Facts ## 5–7.*

Lacking substantial and credible evidence that the claimant was working in 2020 prior to the COVID-19 pandemic, we conclude as a matter of law that the claimant has failed to meet his burden to show that he was out of work for an approved COVID-19 reason under 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 - October 29, 2021



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS

² U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1)(kk), p. I-8.

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

⁴ 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).

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.

KB/rh