

Claimant was forced to return home from her overseas assignment and work remotely for a couple of months until she was laid off due to the COVID-19 public health emergency. The review examiner's credibility assessment rejecting the claimant's testimony that she was working remotely in Massachusetts at the time she was laid off is unreasonable in light of other evidence in the record. She is eligible for PUA benefits.

**Board of Review
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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 May 17, 2020, which was initially approved, but, in a determination issued on December 8, 2020, the claimant was disqualified. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's determination and denied PUA benefits in a decision rendered on April 1, 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 working in Massachusetts at the time she became 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 under her Massachusetts claim. 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 additional documentation demonstrating her connection to Massachusetts in 2020. 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 demonstrate that she had been working remotely in Massachusetts in 2020 when she became unemployed due to the COVID-19 public health emergency, 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 PUA benefits, with an effective date of May 17, 2020.
2. The claimant filed her claim using a Rhode Island mailing address.
3. Prior to the COVID-19 public health emergency, the claimant was employed in the South Sudan by an international health organization based in Switzerland. The claimant's 2018 employment contract shows her state of domicile under the contract as Massachusetts.
4. The claimant has a Massachusetts driver's license issued on July 25, 2018, with an expiration date of November 16, 2022. The address listed on the driver's license is not the claimant's current address.
5. The claimant has no documentation showing that she was living in Massachusetts in 2020.
6. The claimant has no documentation showing that she was performing services in Massachusetts in 2020.
7. The claimant renewed her contract with the same employer for work beginning in February 2021. Her employment contract shows her domicile as Spain.

Credibility Assessment:

The claimant testified that she worked in Massachusetts beginning March 30, 2020, after being evacuated from South Sudan due to the COVID-19 public health emergency. However, the claimant was unable to provide documentary evidence showing this work in Massachusetts. The claimant provided paystubs from January 2020 to May 2020 from a Swiss-based organization that show her address as an address in Spain. The claimant did not provide any documents from the employer showing that she was working in Massachusetts for the international health organization following an evacuation from South Sudan.

The claimant did provide an employment contract from the organization for employment beginning February 2018 which lists her domicile state as Massachusetts. The claimant also provided a new contract with the same employer beginning in 2021 which lists her domicile as Spain.

The claimant testified that she had not filed her tax return as of October 13, 2021, (the remand hearing date). The claimant testified that she was going to file her tax return on October 15, 2021, and provided an alleged tax return document after the hearing. This document shows international earnings as well as Massachusetts earnings, but is unaccompanied by any documentary evidence showing the source of those Massachusetts earnings. The tax return also lists the claimant's address as in Rhode Island. The authenticity of the tax return could not be verified.

Additionally, the claimant was unable to provide a form M-4868 or IRS-4868 showing an extension was sought.

The claimant filed her PUA claim with a Rhode Island address. The claimant testified that her mailing address was a friend's address who forwarded her mail to her. The claimant provided a Massachusetts driver's license and voter registration page which show an address in [Town A]. However, during the hearing the claimant testified that her Massachusetts address was in [Town B]. The claimant was unable to provide any documents showing her [Town B] address. Although the claimant was issued a Massachusetts driver's license in 2018, the claimant did not present substantial and credible evidence showing that she was a Massachusetts resident at the time that her PUA claim was effective. Indeed, the evidence in the record, including her tax returns list her address as Rhode Island.

The claimant testified that she left South Sudan on March 28, 2020, and returned to the United States on March 29, 2020. The claimant provided an email alleging to show her evacuation flights from South Sudan to the United States. This email shows three flight numbers. The first flight (ET 355) travels from [Location A] to [Location B]. The second flight (UA 7200) travels from [Location B] to [Location C]. The third flight (UA 6100) travels from [Location D] to [Location E]. The claimant testified that she did not have other records of the flights.

Based on the totality of the claimant's testimony and documentary evidence, it cannot be concluded that the claimant was living or working in Massachusetts in 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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject Consolidated Finding # 6, which states that the claimant has no documentation of performing services in Massachusetts in 2020, as it is based upon a credibility assessment that is unreasonable in relation to the evidence presented. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for 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.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 criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is an individual who is an

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

employee and was laid off as a direct result of the COVID-19 public health emergency.² Further, the claimant may not be eligible for regular unemployment benefits, and the claimant must file for PUA benefits in the state where he or she was working at the time of becoming unemployed.³

The record shows that the claimant had been working for an international health organization at the onset of the COVID-19 public health emergency. The organization is based in Switzerland, but the claimant was actually working in South Sudan. *See* Consolidated Finding # 3. Although not in the findings, the claimant has presented documentary evidence that she was sent back to the United States at the end of March, assigned to work remotely from home until May 22, 2020, and that the organization declined to extend her mission beyond May 22, 2020, due to the COVID-19 pandemic. *See* Remand Exhibits 6, 13, and 14. Further documentary evidence shows that she was rehired, beginning February 12, 2021. *See* Remand Exhibit 16.⁴

At the outset, we note that the DUA's electronic record-keeping system for regular unemployment benefits shows that the claimant did file a regular unemployment claim on May 26, 2020, but was not found to be monetarily eligible for these benefits.

The review examiner's original decision concluded that the claimant failed to prove that she was working in Massachusetts at the time she became unemployed due to the pandemic. After remand, Consolidated Finding # 6 states that the claimant does not have any documentation showing that she had been performing services in Massachusetts in 2020. Although the claimant did produce a copy of her 2020 tax return, which reflects work in Massachusetts in 2020, the review examiner rejects this evidence 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.) Based upon the record before us, we cannot accept this finding.

The review examiner states several reasons for rejecting this evidence of the claimant's 2020 Massachusetts employment. He rejects the Massachusetts tax return as inauthentic, because he

² U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), Attachment I, (kk)(4), p. I-7.

³ *See* CARES Act, § 2102(a)(3)(A)(i), and UIPL 16-20, Change 6, 4(c), pp. 7-8.

⁴ Remand Exhibit 6 is a document from the organization's human resources department, dated May 20, 2020, confirming that she was working remotely from home. Remand Exhibits 13 and 14 are emails from the organization stating that her mission ended on May 22, 2020, and would not be extended due to the COVID-19 situation. Remand Exhibit 16 is a confirmation from the organization of her return to work assignment from February 12, 2021, through February 11, 2022. While not explicitly incorporated into the review examiner's findings, these documents, as well as the other exhibits referenced in notes 5 to 8 in this decision, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

states that it was filed on October 15, 2021, and there is no evidence that a Form M-4868 or IRS-4868 form was filed for an extension from the original 2021 filing deadline. Actually, the claimant presented a copy of a March 23, 2021, email confirmation from the accountant who prepared her return, confirming that he would file for an extension, and the tax return itself includes confirmation that the Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return was accepted on March 23, 2021, and includes the submission ID number. *See* Remand Exhibits 7 and 17, page 13.⁵

Although the Massachusetts tax return in Remand Exhibit 17 shows that the claimant paid income taxes on income earned in Massachusetts in 2020, the review examiner discredits this, because he states that it was unaccompanied by any documentary evidence showing the source of those earnings. In fact, the claimant produced pay stubs from the international organization showing payments of \$7,868.00 on April 24, 2020, and \$6,780.05 on May 25, 2020.⁶

She also produced exhibits showing that she stopped working in South Sudan and flew back to the United States on March 28 and 29, 2020, and that she was working remotely until May 22, 2020. *See* Remand Exhibits 5, 6, 9, and 13.⁷ Although none of these exhibits identify the location where the claimant performed her remote work, we believe the record as a whole supports the claimant's testimony that her home was in Massachusetts and that that is where she was working when she returned from South Sudan.

Specifically, the claimant filed a Massachusetts income tax return for 2020 showing Massachusetts income and using a Massachusetts accountant to help her prepare her returns (*see* Remand Exhibits 7 and 17). Her initial employment contract with this employer shows her original domicile as Massachusetts. She also produced a current Massachusetts driver's license, proof of a vehicle registered and insured in Massachusetts in 2020, and she has demonstrated that, during the benefit year, she was registered to vote in Massachusetts. *See* Remand Exhibit 11 and Exhibits 2–8.⁸

In his credibility assessment, the review examiner assigned a lot of weight to the fact that the claimant used a Rhode Island address on her tax returns and has provided DUA with this address for her PUA claim. During the hearing, the claimant explained that she did this because she fully expected to return to her overseas post, and she used a Rhode Island address belonging to friends because they would forward her mail to her while living overseas. Given that the claimant had been working in South Sudan for two years, and the record demonstrates that this work was only temporarily disrupted due to the COVID-19 pandemic, her explanation is plausible and reasonable.

⁵ The review examiner re-opened the record to note that he was admitting this tax return, which was submitted after the remand hearing, as an exhibit, though he did not assign it a number. Because it was the last exhibit and he had labelled the previous exhibit as Remand Exhibit 16, we assume he meant to mark it as Remand Exhibit 17. This document, as well as Remand Exhibit 7, an email to the claimant from her accountant, dated March 23, 2021, are also part of the unchallenged evidence in the record.

⁶ The review examiner did not inquire further about these pay stubs, entered as Exhibits 16 and 17 during the original hearing.

⁷ Remand Exhibits 5, 6, 9, and 13 are emails from the claimant's employer discussing evacuation from South Sudan due to the COVID-19 pandemic, confirming the claimant's flights to the U.S., confirming that she continued to be employed working remotely, and ending her mission on May 22, 2020.

⁸ These exhibits include copies of her 2018 employment contract, driver's license, Massachusetts Registry of Motor Vehicles 2020 registration renewal confirmations, temporary Massachusetts license plate, auto insurance ID card, and a printout showing her Massachusetts voter registration status.

We, therefore, conclude as a matter of law that the claimant has demonstrated that she was laid off as a result of the COVID-19 public health emergency, an approved eligibility reason under CARES Act, § 2102(a)(3)(A)(ii)(I)(kk). We further believe that she has demonstrated that she was performing services in Massachusetts at the time that she became unemployed.

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning May 17, 2020, through February 13, 2021, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – April 13, 2022



Paul T. Fitzgerald, Esq.
Chairman



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.

AB/rh