

The claimant failed to present credible evidence that she had income from working as a home health aide in Massachusetts during 2020 that was negatively affected by the COVID-19 public health emergency. She is therefore not entitled to a PUA weekly benefit.

**Board of Review
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Issue ID: N6-FJV8-F782

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 1, 2020. The Department of Unemployment Assistance (DUA) determined the claimant was ineligible for PUA benefits on November 20, 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 in a decision rendered on April 8, 2021. We accepted the claimant's application for review.

The review examiner concluded that the claimant was ineligible for PUA benefits on the basis that the claimant failed to present sufficient evidence to verify receiving income from services performed in Massachusetts in 2020. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, the documents produced with the claimant's Board appeal (payment checks) and the claimant's appeal, we remanded the case for additional evidence for the review examiner to consider the documents submitted with the claimant's Board appeal. The claimant attended the remand hearing with counsel. Thereafter, the review examiner issued his consolidated findings of fact and credibility assessment. 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, a New Hampshire resident, was ineligible for PUA benefits under a Massachusetts claim because she failed to prove that she was working as a home health care worker in Massachusetts in 2020, 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) benefits on May 27, 2020, with an effective date of March 1, 2020.
2. The claimant filed for the PUA claim using a New Hampshire address.
3. In the claimant's initial PUA claim, she reported that she had no income in 2019.
4. The claimant did not work as a home health aide in 2019 and/or 2020.
5. The claimant last worked in 1999 when she retired from a large Manufacturing company. When she retired, she had a pension with the company which she could not draw upon without penalty until December 29, 2019, when she became sixty-five (65) years old.
6. The claimant has congenital birth defects which limit, but do not eliminate, her ability to work. The claimant also has degenerative bone disease which required surgery in 2018 followed by approximately four months of rehabilitation.
7. In March 2019, the claimant had total hip replacement followed by approximately four months of rehabilitation.
8. The claimant's mother, [Name A], is 90 years old and has lived alone since 2016 when her husband died. In 2017, [Name A] broke her leg and had surgery.
9. After the surgery, the claimant and her two sisters occasionally helped their mother with such matters as house cleaning, shopping, bookkeeping and other miscellaneous errands, but otherwise she is self-sufficient. The claimant was not paid for these services.
10. The claimant completed, signed, and filed her 2019 1040-SR on or about February 2, 2020. The return was self-prepared. She reported \$22,554 in social security income, \$7,769 of taxable income, and \$429 in taxes paid. On the return the claimant identified herself as being retired.
11. The claimant has a tax return transcript dated April 14, 2021. The transcript shows the claimant's 2019 1040 was received by the IRS on April 15, 2020. The transcript lists \$7,769 in taxable income, \$22,554 in social security income, and \$429 in taxes paid. The transcript shows no business income or loss.
12. On or about January 21, 2021, the claimant filed an amended return which included a Schedule C. On the Schedule C the claimant identified her principal business as home health care and reported \$480 gross receipts and a net loss of \$687. On the amended 1040, the claimant still identified herself as being retired. The amended return was prepared by her attorney.

13. The claimant filed her 2019 and 2020 Massachusetts Schedule C on or about January 25, 2021.

Credibility Assessment:

During the hearing, the documents submitted by the claimant were entered as remand exhibits. Although the claimant testified she worked as a personal care attendant prior to filing for PUA, the claimant's testimony is not credible and the submitted documentation by the claimant does not support a conclusion that she worked and had earnings as a home health care worker in 2019 and 2020.

For instance, in her initial claim filed in May 2020, she indicated she had no income in 2019. Additionally, the original 2019 tax return filed by the claimant on or about February 2, 2020, listed her occupation as retired and reported no income other than her pension. The IRS tax transcript for 2019 is authentic and only lists the claimant's pension income. The transcript does not reflect any business income or loss. The claimant admittedly did not file tax returns for many years prior to 2019 and she testified that the only reason she filed in 2019 was so she could report her pension income. The original 2019 tax return indicated it was self-prepared, however in the hearing, she testified it was prepared by someone named "[First Name B]", but she could not remember [First Name B]'s last name. The amended 2019 tax return filed on or about January 21, 2021 was prepared by her attorney [Full Name B]. The amendment to the return still listed the claimant as being retired and had no effect on the claimant's tax liability. The claimant admitted it was only amended to show she had earned income in 2019. The amended return is not deemed credible as it is clearly self-serving and not a representation of the claimant's status.

Finally, the claimant submitted her 2019 and 2020 Massachusetts Form NR-PY, Schedule C on or about January 25, 2021. There is no indication that these are amended returns. It is reasonable to infer that the claimant did not file a 2019 Massachusetts tax return in February 2020 return [sic] along with the first 2019 1040-SR. Considering that the claimant's original PUA claim, the 2019 tax transcript and the original 2019 1040-SR do not reflect any self-employment earnings for home health, the credibility and authenticity of tax returns prepared and filed by claimant's attorney in January 2021 are highly suspect and should be disregarded.

There are other aspects of the claimant's testimony that are not credible. In the first hearing held on February 2, 2021, the claimant produced an affidavit signed by her mother. The affidavit was prepared by the claimant's attorney. This affidavit is filled with inconsistencies regarding how and when the documents [sic] was prepared and executed, and it was not deemed reliable or credible. In the remand hearing, the claimant produced another affidavit purporting to be a new affidavit, also prepared by her lawyer and identical in language to the first affidavit except the errors about dates in the first affidavit are corrected. Furthermore, the affiant

(claimant's mother) on each affidavit states "I am elderly and disabled and need assistance with my daily needs and maintaining my household". This language directly contradicts the claimant's testimony about her mother's independence and self-sufficiency and her ability "to take care of herself". This is in addition to a concern about a mother's objectivity. It is highly likely that the claimant's mother would sign, without question, any documents her daughter and her attorney asked her to sign.

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. As discussed more fully below, we agree 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 the Coronavirus Aid, Relief, and Economic Security (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 that individuals will be eligible for PUA benefits if they were a self-employed individual who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency.² Further, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.³ 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.

In rendering his consolidated findings, the review examiner provided an extensive credibility assessment detailing his reasons for determining that the claimant's testimony and documents, which purported to show that she worked in 2019 and 2020, lacked credibility. 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.)

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

² *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), Attachment I, p. I-1.

³ *See* UIPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

Based upon the record before us, we see no reason to disturb the review examiner's credibility assessment and the corresponding findings.

Specifically, the review examiner found that the claimant did not work as a home health aide in 2019 and/or 2020. *See* Consolidated Finding of Fact # 4. Because the claimant has failed to prove that she had been working just before March 1, 2020, the effective date of her claim, she has not shown that she experienced a significant diminution of her customary or usual services because of the COVID-19 public health emergency.

We, therefore, conclude as a matter of law that, because the claimant has not met her burden to show that she became unemployed for a listed reason related to COVID-19 under § 2102(a)(3)(A)(ii)(I)(kk), she is not eligible for PUA benefits.

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning March 1, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 8, 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.

BGM/rh