

Claimant rideshare driver failed to provide credible evidence that he was working in Massachusetts at the time he was affected by the COVID-19 pandemic. He is not eligible for PUA benefits.

**Board of Review
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Issue ID: N6-FJVF-TP9M

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 22, 2020, which was denied in a determination issued on November 13, 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 23, 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 working in Massachusetts when he was impacted by the COVID-19 public health emergency. 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 information about the claimant's employment history, including documentary evidence. The claimant attended the remand hearing. 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 failed to show that he had work in Massachusetts that was affected by 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 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 March 22, 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 self-employed as a rideshare driver.
4. The claimant has a 2019 1099-K from [Company A] showing \$64,455.05 in compensation. This document lists the claimant at a [City A], MA address.
5. The claimant has a 2019 1099-M from [Company B], showing \$691.12 in compensation. This document lists the claimant at a [City A], MA address.
6. The claimant has a 2020 1099-K from [Company B] showing \$5,668.99 in compensation. This document is addressed to the claimant in [City A], MA and shows compensation for the following months: January 2020: \$2,753; February 2020: \$2,132.01; March 2020: \$783.98. The document does not indicate where the rides took place.
7. The claimant has a 2020 1099-K from [Company A] showing \$12,109.50 in compensation. This document is addressed to the claimant in [City A], MA and shows compensation for the following months: January 2020: \$4,335; February 2020: \$4,684.20; March 2020: \$3,090.27. This document does not show where the rides took place.
8. The claimant has screenshots for rideshare trips in the [City B], MA area in early 2020. The rideshare trips do not include the driver's name.
9. The claimant has a March 1, 2021 letter from [Company A] stating he was an independent contractor from May 14, 2014 to May 1, 2021. His most recent trip was March 25, 2020. He attempted to get a letter stating that he was the driver and the specific details regarding the actual trip locations in Massachusetts, but he was he was informed the company cannot provide those documents.
10. The claimant has a MA 2019 Schedule C showing gross receipts of \$90,401 and net profit of \$23,612. The occupation is "limo driver." The Schedule C has a New Hampshire address for the claimant.
11. The claimant submitted various pages of a 2019 joint income tax return. The documents include 1099 and W2 wages.
12. The claimant has a 2019 Massachusetts tax payment voucher for \$335 showing his name in addition to his wife's name.
13. The claimant and his wife separated in 2019 and he does not have any further access to her tax documents.
14. On November 13, 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.

Credibility Assessment:

The claimant's testimony regarding his inability to provide his [Company A] and [Company B] detailed driving records is not credible. A simple internet search shows that a driver can go online and request a detailed record of trips, fares, tips, etc.

At the remand hearing, the claimant was asked to upload his complete 2019 income tax return in the correct page order, as well as the additional documents requested by the Board of Review. The claimant uploaded a screenshot of the first page of his 2019 income tax return, a 2019 1099 from [Company A], and an [Company A] identification placard.

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 failed to show that he was working in Massachusetts when he was allegedly affected by the COVID-19 public health emergency.

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. To be considered a covered individual for PUA benefits, the claimant must self-certify that he is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). [A listed reason under] § 2102(a)(3)(A)(ii)(I)(ii), is that an individual will be eligible for PUA benefits if he or she had “to quit his or her job as a direct result of COVID-19.”

At both hearings, the claimant provided testimony and documentary evidence claiming that he was working as a rideshare driver in Massachusetts in 2019 and 2020, before the COVID-19 public health emergency began in March of 2020. The Board remanded the case to allow the claimant an opportunity to provide a complete copy of his 2019 federal and state income tax returns in page order, copies of all W-2s and Form 1099s issued to the claimant and his wife for 2019, all W-2s and Form 1099s issued to the claimant for 2020, as well as documentary evidence from the rideshare companies for which he worked establishing that he was the driver who performed the rides for various screenshots he uploaded.

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

The review examiner found that the claimant provided Form 1099s from [Company B] and [Company A] issued to him at an address in [City A], MA, but that these documents do not indicate where the rides took place. *See Consolidated Findings ## 6–7.* The review examiner found that the claimant produced screenshares for rideshare trips in the [City B], MA, area from early 2020, but they do not indicate the driver’s name. *See Consolidated Finding # 8.* Notwithstanding that the claimant’s various Form 1099s from 2019 and 2020 were issued to him at an address in [City A], MA, the partial income tax returns supplied by the claimant show a New Hampshire address for him. *See Consolidated Finding # 10.*

The review examiner provided a credibility assessment rejecting as not credible the claimant’s assertion that he could not provide a detailed driving record of his trips and fares from [Company A] and [Company B]. Moreover, the review examiner noted the claimant did not upload his complete 2019 income tax returns in the correct page order. 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 record, we see no reason to disturb the review examiner’s credibility assessment.

Lacking any findings that the claimant was working in Massachusetts at the time the COVID-19 public health emergency was declared in approximately March of 2020, we conclude as a matter of law that the claimant has failed to meet his burden to show that he became unemployed in Massachusetts 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 22, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 6, 2021



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.

JPCA/rh