

The claimant presented sufficient corroborating evidence showing she her cleaning services in Massachusetts were suspended by the COVID-19 health emergency. She was therefore eligible to receive PUA benefits in Massachusetts.

**Board of Review
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Issue ID: N6-FJVH-5T5L

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 22, 2020, which was denied in a determination issued on November 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 PUA benefits in a decision rendered on February 10, 2021. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant failed to show that she was working in Massachusetts when her work was impacted by the COVID-19 pandemic. 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 was not eligible for benefits because she failed to show that she was working in Massachusetts when her work was impacted 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 findings of fact are set forth below in their entirety:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) which was determined to be effective March 22, 2020.
2. The claimant is a resident of New Hampshire and has never filed taxes in Massachusetts.
3. The claimant was issued a Notice of Non-Monetary Issue Determination dated November 17, 2020, informing the claimant they [sic] are not eligible for PUA benefits.

4. The claimant filed a timely appeal related to this Notice of Non-Monetary Issue Determination dated November 17, 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 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 is not eligible 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 that an individual will be eligible for PUA benefits if they were "unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities."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 impacted by the COVID-19 pandemic.

The claimant provided uncontested testimony that she was self-employed as a housecleaner and was unable to continue her work because her clients were not comfortable having her in their houses as a result 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.

In addition to her testimony, the claimant provided hand-written receipts from January through March 2020, entered into evidence as Exhibit 9; two letters from former clients, entered into evidence as Exhibits 7 and 8; bank statements from January through March 2020, entered into evidence as Exhibit 12; and sworn testimony from one of her clients.⁴ The review examiner

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

² *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(k), p. I-6.

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

⁴ These documents and testimony, while not explicitly incorporated into the review examiner's findings, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are thus properly referred to in

rejected the receipts and bank statements 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 the handwritten receipts as not credible because they were self-serving and were only signed by the claimant herself. However, the review examiner did not dispute the credibility of other documentary and testimonial evidence corroborating the contents of these receipts. For example, the two letters admitted into evidence as Exhibits 7 and 8, are from clients named in the receipts for January, February and March of 2020. These letters verify that the claimant performed cleaning work for these two clients during January, February, and March of 2020 at the rate listed in the handwritten receipts. Moreover, the claimant's witness, whose name also appears in the receipts, provided sworn testimony which further corroborated information contained in the receipts. There is no indication from the review examiner's decision that she found either the letters or the witness's sworn testimony not credible. Therefore, while the receipts themselves may be insufficient to show that the claimant was working in Massachusetts when she was impacted by the COVID-19 pandemic, they are corroborated by credible documentary evidence and sworn testimony from a disinterested witness. As such, we conclude that the portion of the review examiner's credibility assessment pertaining to Exhibit 9 is unreasonable in relation to the record before us in its entirety.

The review examiner further found the claimant's bank statements not credible on the grounds that the bank name was incorrect, the bank statements did not have page numbers, and the deposits and withdrawals listed on the document did not add up. However, upon review of Exhibit 12, the name of the bank is consistent throughout all three pages of the Exhibit 12, each page numbered in the upper right corner, and the withdrawals and deposit appear mathematically correct. As the review examiner's rationale is inconsistent with the evidence of record, we conclude that the portion of her credibility assessment pertaining to Exhibit 12 is unreasonable in relation to the record.

Given the record as a whole, the claimant has established that she was working in Massachusetts performing cleaning services that were suspended due to the COVID-19 public health emergency.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was out of work in Massachusetts for the listed COVID-19 reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

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).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 15, 2020 and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 23, 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.

LSW/rh