

Claimant, who was self-employed as a rideshare and food delivery driver, established that he had Massachusetts-based work in March of 2020, but not that his work was diminished by the COVID-19 pandemic. He is not eligible for PUA benefits.

**Board of Review
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Issue ID: N6-FJVH-7VNT

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, which was denied in a determination issued on November 23, 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 22, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to show that he was working in Massachusetts in 2020 when his work was impacted by the COVID-19 pandemic. 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 work activities 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 was not eligible for benefits because he failed to show that he was working in Massachusetts in 2020 when his work was impacted by 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 March 1, 2020.
2. The claimant filed the PUA claim using a Georgia address.

3. The claimant traveled to California for a job interview during the week of January 7th, 2020. The claimant interviewed for a sales position with an energy company but was not offered the position. Around March 2020, the claimant interviewed for a software developer job in [City A], Georgia. This interview was conducted by phone while the claimant was in Massachusetts.
4. The claimant is a recent college graduate who was living and working in Massachusetts in 2019 and 2020. The claimant signed a lease for an apartment in [City B] that ran from March 15, 2019 through May 31, 2020.
5. At the end of the claimant's lease, the claimant moved in with a family member in [City C], Massachusetts. The claimant continues to use his parent's Georgia address for mail and has no utilities in his name at the [City C] address.
6. The claimant earned \$10,852.74 in gross earnings while self-employed as a rideshare driver in 2019.
7. The claimant worked as a rideshare [and] food delivery driver in Massachusetts in 2020. The claimant made 13 deliveries [sic] in January 2020 and earned \$186 in gross wages. The claimant made 8 deliveries [sic] in February 2020 and earned \$68.73 in gross wages. The claimant made between 140 and 145 deliveries [sic] in March 2020 and earned \$683.84 in gross wages.
8. The claimant earned \$18 between February and March 2020 as a delivery driver for a separate company.
9. [Company A], LLC is a limited liability company that the claimant established to conduct his self-employment. It is incorporated in the state of Georgia.
10. The claimant has filed his 2019 federal income tax return. The claimant filed this return using his Georgia address. The claimant was advised by his tax preparer that he was not required to file any state returns for 2019. The claimant has not filed his 2020 tax returns.
11. On November 23, 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.
12. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant provided credible documentation and testimony to support a finding that he was self-employed in Massachusetts in 2020 when his self-employment

was affected by COVID-19. The claimant offered credible and consistent testimony to all of the questions asked of him and was able to provide specific details regarding his self-employment in January, February and March of 2020. The claimant was able to offer the exact number of deliveries he made and his earnings, during each of those months. Further, he provided documentation from the company to bolster the credibility of the testimony.

Although the claimant was unable to provide any documentation of his [City C] address, the credibility of other portions of his testimony supports a finding that the claimant did in fact move to [City C] after his lease ended in [City B] in May 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. 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, except for the end of the first sentence indicating that the claimant's "self-employment was affected by COVID-19," insofar as that is a legal conclusion rather than a determination of credibility. As discussed more fully below, we agree with the review examiner's initial 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 he is a covered individual with a listed COVID-19 related reason for being unemployed under the CARES Act. An eligible COVID-19 listed reason under the CARES Act at § 2102(a)(3)(A)(ii)(I)(gg), is that individuals will be eligible for PUA benefits if they were "scheduled to commence employment and d[id] not have a job or [were] unable to reach the job as a direct result of the COVID-19 public health emergency."

The claimant is a recent college graduate who was living and working in Massachusetts in 2019 and 2020. The lease on his [City B] apartment expired on May 31, 2020. Thereafter, he moved in with a family member in [City C], MA. While the claimant filed his PUA claim using his parent's address in Georgia, which remains his mailing address, the review examiner found he resides in Massachusetts. *See Consolidated Findings ## 2, 4, and 5.*

The claimant worked in Massachusetts as a rideshare and food delivery driver in 2019 and 2020. He earned \$10,852.74 as a self-employed rideshare driver in 2019. *See Consolidated Finding # 6.* In 2020, the claimant earned \$186 in January, \$68.73 in February, and \$683.84 in gross

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

wages as a food delivery driver in March, along with \$18 from another food delivery company. *See Consolidated Findings ## 7–8 and Remand Exhibit 14.*

The review examiner made a credibility assessment, which reflects that the claimant had been self-employed in Massachusetts in 2020, and that his work was affected by COVID-19. The review examiner noted that the claimant provided credible, consistent, and detailed testimony in response to questions asked of him and provided appropriate corroborating documentation.² 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).

As noted above, we accept the portion of the review examiner's credibility assessment that credited the claimant's testimony that he had Massachusetts-based work in the first part of 2020, as reasonable in relation to the evidence in the record. However, our review of the record does not support a conclusion that the claimant had a COVID-19-related reason for stopping his work as a rideshare and food delivery driver in March of 2020.

First, we note that the claimant testified he transitioned from being a rideshare driver for passengers to being a food delivery driver because he was making less money as a rideshare driver.³ However, the record shows that, contrary to the claimant's testimony that the courier business had decreased, his own earnings increased from \$186.00 and \$68.73 in gross wages for January and February of 2020, to \$683.84 in gross wages for the first part of March of 2020, when he stopped working. Thus, the claimant's earnings had increased substantially at the time he stopped working.

Moreover, we take administrative notice that the food delivery business was not among those businesses that were closed down due to the COVID-19 public health emergency at the time the claimant filed his PUA claim in March of 2020. Where the general public was no longer able to eat in public restaurants, the need for drivers to deliver food to customers actually grew after the public health emergency was declared. In any event, even if the claimant had shown that he had an unprofitable business, this is not among the COVID-19-related reasons listed to qualify for PUA benefits under the CARES Act at § 2102(a)(3)(A)(ii)(I).

² For example, for the remand hearing, the claimant produced his complete 2019 federal income tax returns (Remand Exhibit # 5); a March 15, 2020, email confirming his earnings in February and March of 2020 from one of the food delivery companies (Remand Exhibit # 6); his 2019 Form 1099-K from a rideshare company (Remand Exhibit # 9); a 2020 Form 1099 from a rideshare company (Remand Exhibit # 13); and even a screenshot showing he returned to his parents the balance of the security deposit for his Massachusetts apartment on June 16, 2020 (Remand Exhibit # 15), supporting his claim that he remained in that Massachusetts apartment through the end of his lease on May 31, 2020.

³ The claimant's testimony regarding the reasons for his decision to stop working as a rideshare driver, while not explicitly incorporated into the review examiner's consolidated findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

Finally, we note that the claimant's COVID-19 related reason for no longer working as a rideshare or food delivery driver was that he "lived with an elder, at-risk individual, a 50-year-old guy"; and the claimant "didn't want to put him or myself at risk" of contracting COVID-19. A generalized fear of contracting or communicating COVID-19 is also not among the qualifying, COVID-19-related reason enumerated in the CARES Act at § 2102(a)(3)(A)(ii)(I).⁴ See also U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(a)–(k), p. I-4 – I-6.

The review examiner's consolidated findings, supplemented by the documentary evidence provided by the claimant on remand, support the conclusion that the claimant performed services in Massachusetts as a rideshare and food delivery driver in 2020. But, they do not show that the claimant's work was curtailed for any reason under the CARES Act, which qualifies him for PUA benefits.

We, therefore, conclude as a matter of law that the claimant has not met his burden to show that he was out of work in Massachusetts for an approved COVID-19-related reason under the CARES Act, § 2102(a)(3)(A)(ii)(I).

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 - October 26, 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)**

⁴ As set forth under the CARES Act, Section 2102(a)(3)(A)(ii)(I), approved reasons pertaining to the COVID-19 illness include where the claimant himself is diagnosed with COVID-19 (aa), where a member of the claimant's household has been diagnosed with COVID-19 (bb), where the claimant is providing care for a member of the household who was diagnosed with COVID-19 (cc), the claimant is advised to self-quarantine due to COVID-19 related concerns (ff), or the claimant has to quit his job as a direct result of COVID-19 (ii). The claimant here alleged none of these circumstances.

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