

Claimant established that, if it were not for the COVID-19 pandemic, he would have been employed at a summer camp again in 2020, as in past years. He is eligible for PUA benefits.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: N6-FJVH-FKTT

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 May 10, 2020, which was denied in a determination issued on September 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 January 22, 2020. 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 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. 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 entitled to PUA benefits because he did not show that he was unable to start a summer job due to 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) with an effective date of July 23, 2020.
2. On September 16, 2020, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible for benefits beginning the week ending February 8,

2020. He was informed that he was not eligible to receive benefits, because he failed to respond with the appropriate documentation by the due date. The claimant has no work history from the beginning of 2020.

3. The claimant worked as a counselor at a summer camp in Massachusetts in 2019. The claimant has a 2019 W-2 Wage and Tax Statement issued by an employer and an email issued by an employer.
4. The claimant has no documentation indicating that he was going to be working at the summer camp during the summer of 2020. The claimant did not have a definitive start date for his 2020 summer job.
5. The claimant has a 2019 W-2 issued by the camp. The W-2 lists the camp's physical address in Massachusetts. The claimant filed a timely appeal related to this Notice of Non-Monetary Issue Determination dated November 18, 2020.
6. The claimant was able to work.
7. The claimant resides in New York.

Ruling of the Board

In accordance with our statutory obligation, we review 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. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portion of Finding of Fact # 1, which incorrectly states that July 23, 2020, is the effective date of the claim. We reject Finding of Fact # 4, as it is not supported by the record. In adopting the remaining findings, we deem 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 did not prove he was out of work in Massachusetts for a listed COVID-19 reason under the CARES Act beginning the week ending June 6, 2020.

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. Among the requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that he is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). One of those listed reasons is that an individual was scheduled to start employment and does not have a job as a direct result of the COVID-19 health emergency. *See* § 2102(a)(3)(A)(ii)(I)(gg).

Here, the claimant asserted that he was scheduled to start employment at the [Name A] Summer Semester program for the 2020 season but could not as a direct result of the COVID-19 health emergency. He testified that he spent the prior three (3) summers working at the program, was

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

scheduled to work there again in 2020, and that that the program typically runs for the entire month of July. The claimant also presented a letter from the director of the program stating that the claimant would have been re-employed if the park had not closed due to COVID-19 restrictions. *See* Finding of Fact # 3.²

In Finding of Fact # 4, the review examiner states that the claimant did not have documentation to show that he was to be employed at a summer camp in 2020. The review examiner makes this finding because he did not find credible the letter from the director of the summer program stating that the claimant was to be re-employed during the summer of 2020. 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).

In this instance, the review examiner bases his credibility assessment on the fact that the letter at issue is not on letterhead or signed by the director. He further reasons that because the letter is dated December 15, 2020, and is not contemporaneous with the period of time the claimant was affected by COVID-19, the letter is not credible. To be fair, while these may certainly detract from the credibility of the letter, the claimant, who is relatively unsophisticated in the area of applying for unemployment benefits, was not notified that he needed a letter from his employer at the time, or that the communication needed to be signed and on letterhead. Following the denial, it is reasonable to assume that the claimant asked the employer for the letter in order to support his claim at the appeal hearing. Even though the employer prepared the letter at the request of the claimant, it accurately reflects the claimant's testimony regarding his three (3) prior summers with the employer and is further supported by the 2019 Form W-2. *See* Finding of Fact # 3. Moreover, it includes the reason that the claimant was not hired in 2020, which is the foundation of the claimant's PUA claim. Also, there is no indication in the review examiner's decision or in the record of the letter being fraudulent. Therefore, we believe that the review examiner's assessment is unreasonable in relation to the totality and weight of the evidence presented that supports the content of the letter.³

Based on his prior years of summer employment, the director's letter confirming that he would have been re-hired, the claimant's testimony, and the 2019 W-2 from the prior summer employment, the claimant has established that, but for the pandemic, he would have been employed again by the program in the summer of 2020. Thus, he was unable to work due to a listed COVID-19 reason.

We, therefore, conclude as a matter of law that the claimant has shown that he was unable to work in Massachusetts for the reason listed under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg).

² Although this letter is not included in the findings,

³ This portion of the claimant's testimony and the email from the Director, 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 our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning June 28, 2020, through the week ending August 1, 2020, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 14, 2021



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.

TJG/rh