

**Claimant alleges she was working as a self-employed court appointed attorney in 2020 and was unable to perform services due to the court closure and entry limitation in Massachusetts beginning March 2020. However, the claimant failed to provide any evidence of her work in early 2020 prior to the COVID-19 pandemic outbreak.**

**Board of Review  
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**Issue ID: N6-FJVH-R848**

### 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 15, 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 attended by the claimant, the review examiner affirmed the agency's initial determination and denied 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 had failed to establish that she was out of work for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and, thus, she was not eligible for PUA benefits. 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 afford the claimant an opportunity to present further evidence that she was working in 2020 and that her work was affected by COVID-19. The claimant attended the remand hearing. Thereafter, the review examiner issued her 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 did not establish that she was out of work due to a qualified COVID-19 reason, is supported by substantial and credible evidence and is free from error of law, where the claimant did not produce credible documentary evidence demonstrating loss of her court-appointed attorney services in 2020.

### Findings of Fact

The review examiner's findings of fact and credibility assessment are set forth below in their entirety:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) with an effective date of March 15, 2020.
2. The claimant resides in New Hampshire.
3. In 2018 and 2019, the claimant worked as a court-appointed attorney for the Commonwealth of Massachusetts. The claimant holds her office to be in [City A], Massachusetts.
4. On September 16, 2020, the Department of Unemployment Assistance (“DUA”) issued the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive benefits beginning the week ending February 8, 2020. The determination informed her that she had failed to respond with the appropriate documentation by the due date.
5. The claimant’s work was not affected by the COVID-19 public health emergency.
6. At no point in 2020 was the claimant unable to perform her services, or had to provide limited services, as a result of the COVID-19 public health emergency.
7. The claimant’s normal work schedule is from 8:30 a.m. until 6:00 p.m. When the claimant is in court, she is there from 9:00 a.m. until 4:30 p.m. All hours the claimant works are billable.
8. The claimant has no records showing what her billable hours were in 2020
9. The claimant has five (5) [Employer A] Request for Payment for No-Case Duty Day forms for March 30, 2020, April 1, 2020, May 12, 2020, June 9, 2020, and July 8, 2020, respectively. These forms are electronically signed by the claimant but have no signature from the Bar Advocate Program.
10. The claimant does not know when the forms were approved. The claimant does not any have any proof that the forms were approved.
11. In 2018 and 2019, the claimant would receive an average of ten (10) cases a month.
12. The claimant has an 18-month contract, starting in 2018, with the County [A] Bar Advocates. The contract is unsigned.
13. The claimant has a 2019 Federal Tax return along with a 2019 Form 1-NR/PY Massachusetts Nonresident/Part-Year Resident Income Tax Return.
14. The 2019 Federal Tax return contains a Schedule C, which lists the claimant’s principal business or profession as “Attorney”. The listed business address is the claimant’s home address in New Hampshire. The Schedule C lists gross

- receipts or sales in the amount of \$73,192.00. The Schedule C lists a net profit in the amount of \$45,960.
15. The claimant has a 2019 Form 1099-MISC from the Commonwealth of Massachusetts Office of the Comptroller. It lists the recipient as the claimant and contains an address different than either her home (business address) or office address (in [City A], Massachusetts). The 1099 lists nonemployee compensation in the amount of \$73,192.00.
  16. The claimant has a Certificate of Liability Insurance dated November 20, 2020. The coverages section is not filled out.
  17. The claimant has a 2020 Federal Tax return along with a 2020 Form 1-NR/PY Massachusetts Nonresident/Part-Year Resident Income Tax Return.
  18. The 2020 Federal Tax return contains a Schedule C, which lists the claimant's principal business or profession as "Attorney". The listed business address is the claimant's home address in New Hampshire. The Schedule C lists gross receipts or sales in the amount of \$77,514.00. The Schedule C lists a net profit in the amount of \$58,459.
  19. The claimant does not have a 2020 1099.
  20. The claimant has a 2021/2022 contract between the claimant and a bar association in Massachusetts. The contract is signed by the claimant; however, it is unsigned by the Executive Director for the bar association. It was signed by the claimant on June 17, 2021.
  21. The claimant timely appealed the September 16, 2020, Notice of Non-Monetary Issue Determination
  22. The claimant was able to work. No physical ailment prevented her from working.

Credibility Assessment:

The claimant's testimony that she was affected by COVID-19 due to the courts closing is determined to be not credible. The claimant failed to produce any documentation to show that the court closures affected her ability to work. The claimant submitted [Employer A] Request for Payment for No-Case Duty Day forms; however, these are not signed by the Bar Advocate Program. Further, the claimant was unable to provide an exact date as to when the Duty Days were approved and when, if at all, the claimant received payment for those days. The claimant was unable to produce her 2020 1099 form, which would have showed who was paying her and how much she was being paid. The claimant submitted a Certificate of Liability Insurance, however, the section discussing coverage is entirely blank. Therefore, the document is incomplete. Further, the certificate is not

dispositive of the claimant performing any work in 2020. The claimant was additionally asked to produce her billable hours for 2020, or even for the month of March of 2020. The claimant stated that she was unable to do so as it would take “a lot of work.” The claimant was also incapable of describing her billing practices, despite stating that all the hours she works are billable. The claimant’s inability to produce copies of her billable hours are indicative of the claimant not performing any work in 2020.

It is credible that the claimant filed both her 2019 and 2020 taxes. It is further credible that the claimant earned \$4,322.00 more in gross receipts or sales in 2020 than she did in 2019. Further, it is credible that the claimant earned \$12,499.00 more in profit in 2020 than she did in 2019. As such, the claimant’s testimony that she was adversely affected by COVID-19 in 2020 is not credible given that she earned almost \$12,500 more in profits than in 2019. The claimant submitted an eighteen (18) month contract between her and a Massachusetts bar association for 2018. The contract is unsigned and bears no dates. As a result, it cannot be determined when it was intended to go into effect and whether the contract even went into effect. As a result, the contract is insufficient to show that the claimant’s work in Massachusetts was affected by the COVID-19 pandemic. The claimant submitted a 2021/2022 contract with the same Massachusetts bar association. This contract is only signed by the claimant. Further, the contract contains spelling mistakes, includes paragraphs in different font, paragraphs that contain headings while others do not, and paragraphs that are capitalized while other are not. Additionally, the bar association the claimant is allegedly contracting with, is a different entity than the one listed on the signature line on the last page. As a result, the contract is not deemed to be authentic, and it is insufficient to show that the claimant’s work in Massachusetts was affected by the COVID-19 pandemic.

The claimant, unprompted, provided four (4) letters regarding the alleged schools of her children being impacted by the COVID-19 public health emergency. Of the two .pdf letters submitted by the claimant, only one shows a true connection to the claimant. In it, the claimant discusses tuition pricing. Given that this letter does not discuss the claimant’s work in Massachusetts in 2020, it is determined to be insufficient to show that the claimant’s work in Massachusetts was affected by the COVID-19 pandemic. The second letter is an email from the headmaster of a school in New Hampshire. The email itself is not addressed to the claimant in any way, it does not mention the claimant by name, nor any of her children. Further, it does not discuss the claimant’s connection to Massachusetts in either 2020 or any other year. Therefore, it is determined to be insufficient to show that the claimant’s work in Massachusetts was affected by the COVID-19 pandemic. The other two letters are in .docx files. Neither letter is addressed to the claimant by name nor contains any identifying information about the claimant. Further, both letters are unsigned, and while being held out as from the same entity, contain different names in the signature line. Both letters do not discuss the claimant’s connection to Massachusetts in either 2020 or any other year. Therefore, it is determined that these letters are insufficient to show that the claimant’s work in Massachusetts was affected by the COVID-19 pandemic. Finally, the claimant did not provide any

testimony, either at the initial hearing, nor the remand hearing, regarding her children having their school's closed and its effect on her ability to work. As such, the four (4) letters submitted by the claimant are insufficient to show that the claimant's work in Massachusetts was affected by the COVID-19 pandemic.

### 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 deem 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 as to the last sentence of paragraph one.<sup>1</sup> As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant failed to meet her burden to show she was working in 2020 at the time she was unable to provide services due to the COVID-19 outbreak and that she was out of work due to a COVID-19 reason.

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.<sup>2</sup> In order to qualify for PUA, the claimant must show that she 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 she was out of work for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). Among the criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk), is self-employed individuals who experience a significant diminution of their customary services because of COVID-19 public health emergency.<sup>3</sup> Further, a claimant must file for PUA benefits in the state where she was working at the time she became unemployed.<sup>4</sup> Therefore, in order to be eligible for benefits in Massachusetts, the claimant must show that she had work in Massachusetts and was out of work for a listed COVID-19 reason under the CARES Act.

During the initial hearing, the claimant testified that she is a self-employed attorney, contracted with the Massachusetts Bar Advocates Program to work as a court appointed public counsel in 2020, and that she was unable to perform services beginning March 15, 2020, because the in-person entry to the Massachusetts courthouses were very limited due to the COVID-19 pandemic.<sup>5</sup> However, because the claimant did not support that testimony with substantial and credible documentary evidence, the review examiner concluded that the claimant failed to show that she

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<sup>1</sup> The review examiner states, "The claimant's inability to produce copies of her billable hours are indicative of the claimant not performing any work in 2020." Since the claimant did produce a 2020 tax return showing substantial income in 2020, we believe the more reasonable conclusion to draw is that she failed to demonstrate that she had been working in March, 2020, when the pandemic emergency measures began and she filed her PUA claim.

<sup>2</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>3</sup> U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1)(kk), p. I-8.

<sup>4</sup> See IPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. 1-3.

<sup>5</sup> We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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).

was working in Massachusetts in 2020 and that she was unable to continue working as a result of COVID-19.

In her appeal to the Board of Review, the claimant stated that she was able to submit additional documentary evidence, including a Form 1099 from 2020. We remanded the case for the review examiner to afford the claimant an opportunity present additional documents to show that she was working in 2020 at the time she was out of work due to COVID-19. However, at the remand hearing, the claimant did not submit a Form 1099 from 2020, which would corroborate that she was compensated for her work in 2020 by the Massachusetts Bar Advocates Program.

In addition, the review examiner requested records of the claimant's work in early 2020, prior to the COVID-19 outbreak, which the claimant said she could not produce due to her duty not to disclose her client's information. The review examiner then afforded to the claimant an option to redact information, which the claimant declined to do.<sup>6</sup> As a result, none of the documents the claimant submitted indicate that she was working in early 2020 at the time she was allegedly out of work due to COVID-19. *See Consolidated Findings of Fact ## 9, 12, 16, 17, and 20.*

Although the documentary evidence and consolidated findings do show that the claimant performed services in Massachusetts in 2019 (*see Consolidated Findings ## 3, 11, 13, and 15*), the burden is on the claimant to provide evidence that she was working in 2020 at the time she was affected by COVID-19. On this record, the claimant did not meet her burden.

Lacking substantial and credible evidence that the claimant was working in 2020 just prior to the COVID-19 pandemic, we conclude as a matter of law that the claimant has failed to meet her burden to show that she was out of work 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 15, 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**

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<sup>6</sup> This testimony is also 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 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](http://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.

KB/rh