

The claimant was a self-employed plasterer and painter, who testified he was paid in cash. He had numerous text messages and receipts created after the original hearing alleging MA employment that the hearing officer found not credible at the remand hearing. Held he failed to show that he lost work in 2020 due to the COVID-19 public health emergency, and he is not eligible for PUA benefits.

**Board of Review
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Issue ID: N6-FJVJ-8HDL

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 affirm.

The claimant filed a claim for PUA benefits with the DUA, effective March 8, 2020, which was denied in a determination issued on November 18, 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, 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 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. 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 allow the claimant to offer additional evidence and testimony pertaining to work that he performed in Massachusetts during 2020. 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 is not eligible for a PUA claim in Massachusetts because the claimant did not show that he lost any work in Massachusetts 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 consolidated findings of fact and credibility assessment 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 08, 2020.
2. On November 18, 2020, the Department of Unemployment Assistance (DUA) issued a Notice of Nonmonetary Issue Determination—COVID-19 Eligibility to the claimant, stating that he was not eligible for PUA benefits.
3. The claimant is a plasterer, painter, and provides light construction services.
4. In 2018 and 2019, the claimant worked for an individual named [Name A] in [Town A], Massachusetts. He did not work for [Name A] in 2020.
5. In 2020, the claimant did not receive a 1099 because the third-party, [Name A], who usually supplies the 1099, did not offer him any work in 2020.
6. The claimant was paid in cash for jobs he completed but he did not keep a record of when this work was completed.
7. The claimant has three (3) handwritten receipts dated February 24, 2020, March 4, 2020, and March 10, 2020. These receipts were created by the claimant after the initial hearing.
8. The claimant has a text message, dated February 21, 2021, from [Name B] stating “[Claimant] did some plastering work for me on February 24, 2020 for drywall damage in my bathroom.” Jeanne also states, “I have additional work I would like completed, however my elderly mother lives with me and is high risk and due to COVID I cannot [sic] have this completed at this time.”
9. The claimant has a text message, dated February 22, 2021, from [Name C] stating, “[Claimant] did work at my home in March of 2020.” This text exchange includes an additional prior text message that states “Need 18 or so retaining wall blocks?... free in [Town A]”.
10. The claimant applied for his Massachusetts Driver’s license after he filed for PUA. The license was issued on November 19, 2020 and has an expiration date of March 22, 2025.
11. The claimant applied for his DTA benefits after he filed for PUA benefits.
12. The claimant applied for his MassHealth after he filed for PUA benefits.
13. The claimant delayed applying for his MassHealth, DTA card, and Driver’s License because he was afraid of not getting paid PUA benefits.
14. The claimant has a lease addendum dated July 10, 2019, that states, “This addendum is adding [Claimant] to the TAW, and all other documents signed for above property.” The document indicates that the landlord is [Name D].

Credibility Assessment:

The claimant's testimony that he worked in Massachusetts in 2020 is not credible. The claimant and his witness both testified that he did not work with [Name A] in 2020, and he did not have any tax documents to support any other employment in 2020.

Despite his testimony that he worked several jobs by himself in 2020, the handwritten receipts provided were created after he filed for PUA. Although the claimant alleges that he created them prior to the appeal hearings, he credibly testified that he was paid in cash for several of the alleged jobs and that he is terrible at keeping records. Although the claimant had a witness attest to the validity of the receipts, the testimony was provided by the claimant's girlfriend, who is not an unbiased party to this proceeding. Moreover, the claimant was unable to provide detailed explanations regarding the completion of this alleged work and appeared to be reading dates directly from the receipts. Although he provided several text messages from individuals claiming he provided work for them, these text messages, which were created approximately one year after the alleged work was done, are insufficient to support the work was completed in 2020. It appears that, like the receipts, the text messages were created specifically for the hearing, and, given the other evidence in the record, the claimant has not shown that the information contained in those messages is credible or true. In particular, the text messages from [Name C] discussing retaining wall blocks appears to be sent as if he was working with the claimant as an employee or co-worker on a separate job, suggesting that the text message was sent by a friend or a co-worker to help the claimant obtain benefits, and not as a client. Additionally, this individual has the same last name of the person listed as the landlord on the lease addendum. The lack of credible documentation, such as contemporaneous records of his work, diminish the credibility and legitimacy of the text messages and receipts provided.

The claimant testified that he has lived in Massachusetts since 2017; however, this appears unlikely because most of his documentation contains a New Hampshire address and he excessively delayed in obtaining his MassHealth card, DTA card, and Driver's license. Although he initially alleged that he waited to obtain the documents because the facilities were backlogged and he was fearful of going in, the claimant inevitably admitted that he obtained the documents after he was denied because he was afraid of not getting paid. The claimant did provide a COMCAST receipt dated January 30, 2018, and a lease addendum dated July 10, 2019, that states the claimant was added to the tenancy at will lease. However, neither of these documents show the claimant was living in Massachusetts in 2020 prior to his claim, and the legitimacy of the addendum further undermines the claimant's Massachusetts residency.

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. As discussed below, we believe that the review examiner’s credibility assessment is reasonable in relation to the evidence presented. As further discussed below, we agree with the review examiner’s legal conclusion that the claimant has not carried his burden to show that he is eligible for PUA benefits in Massachusetts.

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 Labor¹. 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 provides that self-employed individuals (including independent contractors and gig workers) who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency, even absent a suspension of services, may self-certify under item (kk). *See* CARES Act, § 2102(a)(3)(A)(ii)(I)(kk); *see also* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1), p. I-8.

In rendering his consolidated findings, the review examiner provided an extensive credibility assessment detailing his reasons for deeming the claimant’s testimony that he worked in Massachusetts in 2020 to be 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.) Based upon the record before us, we see no reason to disturb the review examiner’s credibility assessment.

Because the claimant has failed to prove that he had been working just before March 8, 2020, the effective date of his claim, he has failed to show that he experienced a significant diminution of his customary or usual services because of the COVID-19 public health emergency within the meaning of the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

We, therefore, conclude as a matter of law that, because the claimant has not met his burden to show that he became unemployed for the listed reason related to COVID-19 under § 2102(a)(3)(A)(ii)(I)(kk), he is not eligible for PUA benefits.

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

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning March 8, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 14, 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.

TJG/rh