

**The claimant failed to provide credible evidence that she lost a job at her cousin's restaurant due to the COVID-19 pandemic. She is not eligible for PUA benefits.**

**Board of Review  
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**Issue ID: N6-FM6V-2TN4**

### 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 October 1, 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 12, 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 working in Massachusetts or had a genuine offer of work in Massachusetts that 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 employment history. 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examiner's decision, which concluded that the claimant failed to show that she had a *bona fide* offer of work that was rescinded due to the COVID-19 pandemic, is supported by substantial and credible evidence and is free from error of law.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 with an effective date of March 8, 2020.
2. The claimant lives in [City A], Massachusetts and lived there in 2019 and 2020. The claimant lives with her father and four siblings.

3. The claimant started her senior year of high school September 2019.
4. The claimant did not work in 2019. The claimant was capable of and available for work in 2019 but her father did not want her to work.
5. The claimant's cousin is the owner/manager of a restaurant in [City A], Massachusetts.
6. The claimant's cousin and his family lived with the claimant's family until the end of 2019. The claimant's cousin helped pay the rent and household bills prior to moving out of the claimant's family residence. After the cousin moved out, he no longer contributed as much money to the claimant's household.
7. Due to the COVID-19 public health emergency, the cousin's restaurant struggles financially. The cousin can no longer provide the same financial assistance to the claimant's family.
8. The claimant has no credible documents regarding a job offer or the withdrawal of a job offer at the cousin's restaurant.
9. The claimant graduated from high school in the spring of 2020. The claimant started college in September 2020 and takes three classes. The claimant's three older siblings also attend this college. The claimant's younger sibling is in high school.
10. The claimant did not work in 2020 and is currently not working.

#### Credibility Assessment:

The claimant's testimony at the first hearing was inconsistent with her testimony at the remand hearing on several important issues, thereby diminishing her overall credibility. The claimant's testimony was inconsistent regarding the following:

The claimant testified at the first hearing that before the COVID-19 public health emergency, she applied to several jobs. She testified that she applied to her cousin's restaurant, other restaurants, a convenience store and [Company A]. The claimant further testified that besides her cousin's restaurant she had another job offer to work as a cashier at a convenience store near her home. She testified that the job at her cousin's restaurant was her best job offer and so she accepted that offer. This testimony conflicts with the claimant's testimony at the remand hearing. At the remand hearing, the claimant testified that prior to the COVID-19 public health emergency, she only applied for the job at her cousin's restaurant and got the job immediately after she talked to him. The claimant testified that since the pandemic, she has applied to only one job at [Company A], which she did not get. The claimant's testimony, under oath, regarding her search for work prior to the pandemic is not consistent.

The claimant was questioned at both hearings about the written job offer dated 2/25/2020 and the written rescission of the job offer dated 3/14/2020. The claimant's testimony regarding these letters is not consistent. At the first hearing, the claimant was asked how she received the letters. The claimant was specifically asked if she kept the envelopes to the letters. The claimant responded that she did not think she kept the envelopes because she usually throws envelopes away. The testimony that she received the letters in envelopes is not credible, because the letters have no creases or folds. This discrepancy detracts from the notion that the letters are authentic. Furthermore, the claimant's testimony regarding how she received the letters changed at the remand hearing. At the remand hearing, the claimant was specifically asked how her cousin sent the letters to her and she testified that he came to her house and brought the letters to her. This testimony lacks veracity. The claimant testified that her cousin comes to her family home often to visit and bring chicken. It is not credible that her cousin would hand her a written document instead of just talking to her. This also undermines the claimant's testimony at the first hearing that once she received the letter, she called her cousin to accept the job offer. The claimant's testimony regarding the way she received these letters is inconsistent, thereby undermining the credibility of the job offer.

At the remand hearing, the claimant's cousin was called as a witness to testify. The cousin was asked if he could proceed in English and answered that he could. Prior to the cousin testifying, the claimant was specifically told she would have an opportunity to ask her cousin questions, but to please remain silent during his testimony. The claimant's cousin was questioned regarding when he made the job offer to the claimant and before the cousin answered, the claimant could be heard answering the question and saying "February." The claimant was again asked to please remain silent while her cousin testified. The cousin was then asked when the job was supposed to begin, and again the claimant could be heard answering the question. The claimant stated "March." The claimant was asked again to please remain silent while her cousin testified. The claimant's blatant attempt to influence her cousin's testimony and answer the questions when specifically requested to remain silent undermines the claimant's credibility, the credibility of any job offer, and the witness's credibility.

The cousin was also asked about how the letters were provided to the claimant. The cousin testified that he did not mail the letters but instead gave the letters to the claimant. He stated that the claimant came to him and he gave her the letters. When asked why he wrote the letters, he wavered. He began by stating that the claimant asked for the letters. When asked when he gave her the letters, he said in March, but then stated that he did not remember. Overall, the testimony of the cousin is not deemed credible.

Lastly, the claimant testified at the first hearing that she was looking for work because she must pay her own rent and bills and that not having the job was a financial hardship for her. The claimant testified that she has needed to ask people for favors. At the remand hearing, the claimant testified that she wanted to work to

start helping to pay the family bills. The claimant testified regarding the needs of her father and her four siblings and wanting to contribute to the family. The claimant never testified to family needs or hardship at the first hearing.

Given the numerous inconsistencies in the claimant's testimony, the claimant's testimony is not accepted as credible. Looking at the totality of the testimony and evidence presented, the claimant's testimony that she had a job offer to start work at her cousin's restaurant on March 16, 2020 is not credible. Furthermore, the testimony of the claimant's cousin contributed to the lack of credibility of the job offer and the overall lack of veracity of the claimant's claim.

### 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. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant failed to show she had a *bona fide* offer of work that was rescinded by the COVID-19 pandemic.

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>1</sup> In order to qualify for PUA benefits, the claimant must show that she is a covered individual within the meaning of the CARES Act. An eligible COVID-19 listed reason under the CARES Act at § 2102(a)(3)(A)(ii)(I)(gg), is that an individual 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."

At both hearings, the claimant provided testimony and documentary evidence suggesting that she was offered a job at her cousin's restaurant which was later withdrawn as a result of the COVID-19 pandemic. The review examiner conducted a thorough review of the record and provided a detailed credibility assessment rejecting this evidence 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 record, we see no reason to disturb the review examiner's credibility assessment.

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

Lacking any findings that the claimant had a job or that a job offer was rescinded, we conclude as a matter of law that the claimant has failed to meet her burden to show that she was unemployed 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 8, 2020.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 13, 2021**



Charlene A. Stawicki, Esq.  
Chairman



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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](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.

LSW/rh