

The claimant did not provide any credible evidence showing that she had contractually agreed to sell her products at events in Massachusetts in 2020 and was unable to do so because the events were canceled a result of the COVID-19 pandemic. She is not eligible for PUA benefits.

**Board of Review
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Issue ID: N6-FPNV-4VL9

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 22, 2020, which was denied in a determination issued on December 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 March 17, 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 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 obtain additional information and documentation relevant to the claimant's self-employment. 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 failed to show that she became unemployed as a result of the COVID-19 pandemic because she was already unemployed before the effective date of her claim, 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 22, 2020.

2. The claimant has no documentation showing that she worked or performed services in Massachusetts in 2020.
3. The claimant was not scheduled to host or attend any event as a self-employed freelance artist that was canceled because of the COVID-19 health emergency.
4. The claimant's children's school was closed on March 13, 2020 because of the COVID-19 pandemic. The claimant was their care giver and had to stay home with them as they did their classes.
5. The claimant was diagnosed with COVID-19 in October 2020. The claimant received her diagnosis on October 28, 2020.

Credibility Assessment:

During the remand hearing, the claimant testified that she started working as a freelance artist in February 2018. The claimant stated that she would make customized items for several different customers. The claimant has pictures of several items which she allegedly made, such as candy wrappers, Christmas ornaments, and a picture of a wall painting. However, there are no identifying marks on these items showing that they were made by the claimant. The claimant has invoices allegedly from work she did in her business. However, several invoices have the same invoice number. When asked about this, the claimant stated that she forgot to change the invoice numbers. It is not credible that someone who is running a business would issue so many invoices with the same number. Moreover, several of these invoices are undated. The claimant has invoices from 2019 and 2021, but she does not have any invoices from 2020. The claimant stated that she started attending freelance events in 2019, starting with different homebased events. She also testified that she attended a black history event in 2019, and although she was not a vendor, she made items for the event such as the backdrop, banner, and t-shirts. However, the claimant has no documentation from this event other than a flyer, which does not prove that the claimant attended or that she was involved in any way with this event. The claimant testified that she also attended a pop-up Valentine's Day event in February 2020. She has a flyer allegedly [from] this event, which she states has her logo. The claimant has no other documentation showing that she attended this event.

The claimant testified that she was unable to attend two scheduled events in 2020, because of the COVID-19 emergency. The claimant stated that one of the events was a black history month event scheduled for March 2020. The claimant has a flyer purportedly about the event, which shows that it was canceled because of the pandemic. However, the flyer shows a general announcement regarding the cancellation of the event and does not specifically refer to claimant being involved in the event. Furthermore, the claimant did not provide any evidence that she was personally scheduled to work at this event. The claimant stated that she had an email from the organizer contacting her in January or February 2020 about the event. At

the remand hearing, the record was held open for her to submit documents showing that she was invited to attend this 2020 black history month event. However, the claimant did not submit any documentation regarding this by the agreed upon deadline.

Additionally, the claimant testified that she had her own event scheduled for May 9, 2020, which she could no longer host because of the pandemic. During the first hearing, the claimant testified that she had entered into a contractual agreement regarding the venue for the event and could produce the contract. At the remand hearing, the claimant stated she tried reaching out to the party planner to have that the contract uploaded but was unsuccessful because the planner, who was very busy, did not get back to her. The claimant also testified that she had not impressed upon the party planner that it was something she needed for [the] hearing. At the remand hearing, the record was held open for the claimant to upload that contract regarding the venue for May 9, 2020; however, the claimant did not submit that contract. It is likely that the claimant, if such a contract existed, would have made of an effort to obtain it. The fact that she did not suggests that no contract ever existed.

After the remand hearing, the claimant uploaded screenshots of conversations purportedly between her and prospective vendors for the event she was planning. However, it is not clear from the screenshots that these conversations were between the claimant and the prospective vendors, because these conversations have no dates and there is nothing identifying the claimant in the conversations. Furthermore, the conversations do not specifically show or confirm that the May 9, 2020, event was booked and confirmed. The claimant has an unsigned vendor agreement, which could have been created for the purposes of receiving PUA benefits. This evidence did not show that she was supposed to be working in Massachusetts, but could not do so due to COVID-19.

During the first hearing, the claimant testified that due to COVID-19 emergency, she had to stay home with her children whose school was closed due the pandemic. Even though the claimant was the primary care giver for her children whose school was shut-down due to the pandemic, she was not working (as indicated above) when the COVID-19 emergency began. Additionally, the claimant has a document from her doctor dated October 28, 2020 regarding her COVID-19 diagnosis. However, again, although the claimant was diagnosed with COVID-19, her state of unemployment was not due to the diagnosis because she was already unemployed before the effective date of her 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 did not meet her burden to show she was unemployed as a result of 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.¹ 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 evidence suggesting that she was a freelance artist who intended to sell her products at several events in Massachusetts in 2020 but was unable to attend these events because they were canceled 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.

Consistent with the review examiner's credibility assessment, we cannot conclude that the claimant had entered into an agreement to sell her products at a Massachusetts-based event in 2020 that was later canceled as a result of the COVID-19 pandemic. We, therefore, 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.

¹ Pub. 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 22, 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.

LSW/rh