

The claimant was unable to show that he lost work in Massachusetts in 2020 due to the COVID-19 public health emergency, because the partial tax return and uncorroborated earnings sheet he submitted do not rise to the level of substantial and credible evidence. He is ineligible for PUA benefits.

**Board of Review
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Issue ID: N6-FTVT-R3DM

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 January 13, 2021. 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 May 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 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 obtain further evidence of the claimant's work in Massachusetts in 2020. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant could not show that he was forced out of work due to the COVID-19 public health pandemic and is therefore ineligible for benefits, 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 PUA benefits, with an effective date of March 15, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.

2. The claimant was not employed in Massachusetts in 2020.
3. The claimant does not have complete copies of Federal and Massachusetts income tax returns for 2019 and 2020 or any receipts showing that he filed income taxes for those years.
4. The claimant has no contemporaneous correspondence between himself and a taxicab company from November 1, 2019, through April 1, 2020.
5. The claimant does not have paystubs or records of income showing he received income from January 1, 2020, to [the] present.
6. The claimant has no documents containing a name and address of where he allegedly worked or who the claimant allegedly worked for from November 2019 to April 1, 2020.
7. The claimant has no documents to show possession of a taxicab or use of a taxicab for employment from November 2019 through April 2020.
8. On January 13, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits as of the week ending February 8, 2020.
9. The claimant appealed the DUA's determination.

Credibility Assessment:

While the claimant alleged he was self-employed as a taxi driver in Massachusetts in 2020, these allegations were not credible. Although the claimant did submit alleged Schedule Cs for 2019 and 2020, one page of purported tax records from these two years does not rise to the level of substantial and credible evidence. The claimant did not produce complete copies of Federal and Massachusetts state income tax returns for the tax years 2019 and 2020 to corroborate such self-employment, despite the Board of Review's explicit request.

The alleged schedule Cs listed no expenses in any line except line "27a Other expenses (from line 48)," yet line 48 is not a line printed on the schedule C. Findings of fact about the Driver Year to Date Summary Report could not be made because the claimant did not produce paystubs or records of income showing the claimant received payment from January 1, 2020, to [the] present to corroborate the contents of the Driver Year to Date Summary Report, despite the Board of Review's explicit request. The absence of complete or corroborating documentation discredits the claimant's allegations. The claimant asserted he stopped receiving dispatch calls in March 2020. However, this assertion is not credible in light of the claimant's failure to produce any contemporaneous correspondence between the claimant and a taxicab company regarding the

claimant's alleged employment; any pay stubs or records of income the claimant allegedly received from January 1, 2020, to the present; and any documentation bearing the name and address of where he allegedly worked or for whom he allegedly worked from November 2019 to April 1, 2021. These are all documents that the Board of Review requested the claimant to provide.

The claimant's failure to provide this corroborating documentation discredits his assertions. The claimant alleged he returned the car that he had been renting for his taxi service. This allegation is also not credible in light of the claimant's failure to provide any documentation to show he was in possession of a taxicab or had use of a taxicab for employment from November 2019 through April 2020. This was further documentation the Board of Review expressly requested and the claimant's testimony alone on this point does not rise to the level of substantial and credible evidence.

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 show that he was unemployed as a result of the COVID-19 public health emergency.

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 eligibility criteria under § 2102(a)(3)(A)(ii)(I)(kk), is that a self-employed individual, including an independent contractor and gig worker, who experiences a significant diminution of his or her customary or usual services because of the COVID-19 public health emergency is eligible for PUA benefits.² Further, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.³

The claimant is alleging that he was working as a taxicab driver in Massachusetts in 2020 when the COVID-19 public health emergency led to a substantial decrease in ridership that forced him to stop driving. To show that he worked in Massachusetts in 2020, the claimant provided a copy of the Schedule C form from his 2020 tax return, as well as a purported earnings sheet showing

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

² See 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.

³ See UIPL 16-20, Change 1 (Apr. 27, 2020), Question 7, p. I-3.

ridership and earnings figures from January through March of 2020. *See* Remand Exhibits 5 and 7.

However, the consolidated findings state that the claimant did not work in Massachusetts in 2020. *See* Consolidated Finding # 2. This finding is based on the review examiner's assessment that the documents provided by the claimant lacked credibility, and his testimony alone, without corroborating documentation, did not rise to the level of substantial and credible evidence to support his allegations of being self-employed in 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.)

Here, the credibility assessment states that the claimant's 2020 Schedule C form is only a single page of a completed tax return and is therefore not substantial and credible evidence. The review examiner noted that the 2020 Schedule C lists expenses under line 27a that are carried over from line 48, however, no such line is included on the form he submitted, which suggests that the Schedule C itself is incomplete. *See* Remand Exhibit 7. The Schedule C does show an amount of earnings, but, without the completed filing, there is nothing about the document that was submitted that shows that it was part of an authentic, filed tax return. The review examiner stated in his credibility assessment that the claimant did not provide documentation to corroborate the information contained in his tax returns. This is somewhat accurate. However, it does not consider the tax returns in light of the Driver Year to Date Summary Report, which has some corroborative value in that the purported earnings of \$6,935.74 reflected in the sheet match the earnings reported on the 2020 Schedule C. *See* Remand Exhibits 5 and 7.⁴

Although the review examiner did not address the potential corroborative value of the two documents, he did consider the lack of corroborating evidence for other allegations the claimant made in his testimony. The claimant testified that, once his ridership numbers began to drop, he was forced to return the cab, which he had been renting, to its owner. He was, however, unable to provide documentation showing that he rented the cab or that he had to return it. *See* Consolidated Finding # 6. The claimant testified that he processed payments through an electronic accounting system, but the only evidence that he provided was the Driver Year to Date Summary, which was merely an overview and contained no information that would shed light on the relationship between the claimant and the purported payment service. *See* Consolidated Findings ## 5 and 6.

Given the incomplete nature of the tax documentation and the lack of corroborating evidence to support the claimant's testimony, the credibility assessment in this case is reasonable relative to

⁴ 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).

the evidence presented, and the finding that the claimant did not work in Massachusetts in 2020 is supported by substantial and credible evidence. Having found that the claimant did not work in Massachusetts in 2020, the review examiner properly concluded that the claimant is not entitled to benefits.

We, therefore, conclude as a matter of law that the claimant has not met the requirements to demonstrate that he was unemployed or partially unemployed for the reason listed under CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning March 15, 2020, and indefinitely thereafter.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 8, 2022



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

RG/rh

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