

**The claimant testified that she was self-employed as a furniture restorer in Massachusetts when the COVID-19 pandemic hit. Because she has COPD, the claimant explained she was instructed to self-quarantine by her doctor and was therefore unable to work. However, she was unable to provide credible documentary evidence showing that she was working in Massachusetts or that her self-quarantine precluded her from continuing to work as a furniture restorer.**

**Board of Review  
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**Issue ID: N6-H278-7T9R**

### 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 December 6, 2020, which was denied in a determination issued on February 1, 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 April 2, 2021. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On July 21, 2021, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence pertaining to the claimant's employment during the 2020 calendar year. 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 did not present substantial and credible evidence showing that she was working in Massachusetts in 2020, or that her work was negatively impacted by 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) benefits, with an effective date of December 6, 2020.

2. The claimant filed her PUA claim using the address: [Address A], Massachusetts.
3. The claimant does not have authentic documentation showing that she resided at [Address B], Massachusetts in 2019 or 2020.
4. The claimant owns a mobile home in Florida. The claimant hopes to move to Florida permanently some day.
5. The claimant does not know if she was a single, unmarried woman when she signed her tax returns on April 1, 2021. The claimant's marriage status is unknown.
6. The claimant is partially disabled and suffers from Chronic Obstructive Pulmonary Disease (COPD). If the claimant were to work, she would limit her work time to 5-15 hours each week, so as not to affect her Social Security Disability Insurance (SSDI) benefits.
7. An April 9, 2021 note on the claimant's claim in FAST UI states: "Spoke to claimant who is asking if her appeal can be escalated/expedited because of a monetary hardship. The claimant says that she has barely any money. She is on SSDI. She receives food stamps and is on MassHealth. She was paying child support through February 2021. She added that most of her SSDI is used to pay her rent for a furniture restoration shop that she says is closed but she does not want to lose it. She said that she has not been working because she has COPD and is on strict quarantine."
8. The claimant agrees with the April 9, 2021 note.
9. The claimant does not have a written lease agreement for a business property and has no records, checks, bank statements, or other authentic documentation showing she paid rent for a business property in 2020.
10. The claimant has known [Name A] for a lengthy period of time. She married him at some point in time. It is unknown if they are still married. The claimant has no documentation of her leasing a space from [Name A]. The claimant does not have information as to how long he may have leased out his property.
11. The claimant did not work in 2019 or 2020. The claimant has self-quarantined since the start of the COVID-19 public health emergency because she has COPD.
12. The claimant was not performing work at [Address C], Massachusetts in 2020.
13. The claimant was not scheduled to start a job with a new employer in 2020. She did not have an offer of work.

14. The claimant was not self-employed as the owner of a furniture refinishing and restoration business prior to the effective date of her claim.
15. The claimant's gross sales and net income from self-employment from January 1, 2020 through December 6, 2020 is unknown.
16. On February 1, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination- COVID-19 eligibility, informing her that she was not eligible to receive PUA benefits.
17. The claimant appealed the DUA's determination.

#### Credibility Assessment:

During the remand hearing, the claimant's tax documentation was entered into the record, and the Board's remand order and questions were reviewed with the claimant. The claimant responded to the questions, and no further evidence or testimony was needed for the review examiner to render these consolidated findings of fact or a credibility assessment. Upon review of the full record after the close of the hearing, including the documentary evidence and the claimant's testimony, it is found that the claimant's testimony is not credible.

The claimant testified that she was self-employed as a furniture refinisher and reseller with a shop located in [Town A], Massachusetts. The claimant represented in her initial claim filing that she had no recent work history and was going to start a job, but she testified that she already had a business of refurbishing furniture. The claimant's testimony often referenced her financial hardship and her lack of funds to start the business. Yet, in pictures of her alleged shop the claimant is standing in a room full of finished inventory and work in process. Although she testified that she invested \$5,000 of her own money to purchase inventory and supplies for her business, she has no bank records or receipts showing these purchases or any records, such as emails or text messages, of where or when it was acquired. Likewise, she has no records or receipts for any supplies or equipment used to refinish the furniture. Even if the claimant obtained her inventory from antique stores, junk shops, roadside castaways, or online ads as she alleged, it is unlikely she would have no records of any kind given the vast amount of alleged inventory in the pictures.

Similarly, the claimant submitted numerous pictures of furniture being offered for sale or sold online, but the claimant's name does not appear in the pictures of these ads, nor do the names of any of the purchasers. The physical location of the furniture depicted in the ads and her pictures is also unclear. Although the claimant insisted the online marketplace kept these records for her automatically, none of the pictures submitted indicate the claimant's involvement in these alleged sales. Even if it were to be believed the pictures represent the sales she made from her alleged business, the amount is inconsistent with her tax documentation. The amount

reflected as gross revenue in the tax returns is substantially less than the combined amounts reflected in the pictures of the sold items the claimant submitted as proof of her business. These discrepancies detract from the authenticity of the documentation. Thus, her gross and net income is not clear or supported by substantial and credible evidence.

The claimant also submitted for the record a letter dated February 3, 2021, purporting to be from the landlord of her shop space. The letter states the claimant has sub-let the shop since January 1, 2020, for \$550 per month. The last name of the landlord is the same as the claimant's hyphenated last name in her online marketplace profile page. When asked her relationship with the landlord the claimant admitted she was married to him "briefly" in 2018, and "believed" she was now divorced, but could not confirm when that occurred. The claimant's lack of certainty as to whether she was divorced from the landlord undermines her credibility.

Moreover, the letter submitted by [Name A] lacks credibility. The letter indicates that [Name A] did not see the claimant since February 2020, which is contrary to her testimony. Again, the claimant has no records of rent paid, or a lease. Her ties to the [Town A], Massachusetts address are not supported by independent documentation. In addition, the claimant testified that she sold two cars to pay the rent, but has no records of the sales or the income derived from that.

The claimant was asked to submit business records of any kind to demonstrate her sales and other standard business practices. She submitted one page of a bank statement which lists no balance or transactions, or activity of any kind. The statement was for the period from 11/26/2020 to 12/25/2020, just before she filed her PUA claim. The bank statement the claimant submitted is not substantial or credible evidence of her refinishing business. Where the claimant admitted she used the banking account to deposit her disability checks, thus indicating that she has at least one bank account, it is illogical the claimant would have no other records showing business banking transactions.

Findings of fact about the claimant's residence could not be made based upon a review of the record. Most of the documentation in the record has a P.O. Box from [Town B], Massachusetts. The claimant submitted a doctor's note, which listed a [Address B] address in [Town B], Massachusetts. However, the document does not appear to be authentic. There are two letterheads (one black and white and one in color) on the document. The sizes of the fonts differ within the document. There is a faint line in the upper third of the document, suggesting that the document was not created by the claimant's medical provider. Generally, the document is not accepted as authentic, and so the address listed on the document was not adopted as true.

As to the Board of Review's question regarding the April 9, 2021 note, the claimant testified that she agrees with the note. However, portions of the note are inconsistent with the claimant's testimony. For example, the note indicates that the claimant

used her SSDI to pay her rent for the furniture shop; however, she testified that she sold two cars to pay the rent for the shop. Therefore, although the Board asked whether the claimant agreed with the note, and such a finding of fact was made by the review examiner, no findings of fact that were made that the information contained within the April 9, 2021 was true.

The Board of Review asked various questions about the claimant's tax documentation, and findings of fact were made indicating that the information contained within the tax documentation could not be verified. For example, the rent was listed as \$6,600.00 on the Schedule C. Other than a letter allegedly submitted by [Name A], there are no records of this (such as a lease or payment records).

The Board of Review asked multiple questions about the claimant's work and work location(s). The documentation submitted by the claimant, including the Marketplace documents and the pictures, do not show where she performed her work. She did not provide credible documentation of where she was living in 2019 and 2020. Therefore, findings of fact as to whether the claimant worked or where she worked could not be made, as the claimant did not provide substantial and credible evidence of such work.

### 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 that she was working in Massachusetts, or that such work was negatively impacted 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. Among the criteria for eligibility established by the Secretary of Labor, in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is that an individual will be eligible for PUA benefits if they were "unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities."<sup>2</sup> 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.<sup>3</sup> Therefore, in order to be

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

<sup>2</sup> U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(k), p. I-6.

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

eligible for benefits, the claimant must show that she had work in Massachusetts that was negatively impacted by the COVID-19 pandemic.

During both hearings, the claimant testified that she was self-employed as a furniture restorer in Massachusetts, until she was unable to work due to the impact of the COVID-19 pandemic. After conducting a comprehensive review of the documentary evidence of record and the claimant's testimony at both hearings, the review examiner rejected the claimant's testimony 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).

In accordance with the Board's remand order, the review examiner inquired into a wide variety of topics pertaining to the claimant's business practices. As discussed in the credibility assessment, when the claimant was asked about how she obtained her inventory, she explained that most of the furniture she refurbished was obtained from individuals and other vendors using the same online marketplace through which she sold her finished products. However, the claimant was unable to produce any purchase orders, receipts, or other electronic communications validating this testimony. The claimant's inability to produce such documentation is inconsistent with her testimony that she uses the records from the online marketplace to keep track of all her business transactions.

When asked to provide documentation accounting for her sales and expenses in 2020, the claimant provided a series of documents, admitted into the record as Exhibit 5, purporting to be a comprehensive list of her sales during the 2020 calendar year. However, as the review examiner noted, these documents lack information that would be expected of a business transaction or record. They do not identify the claimant as the seller, do not identify the customer, and do not contain any information about the terms and conditions of the transaction beyond noting the sale price of the item.<sup>4</sup> Additionally, as the review examiner noted, the gross profit listed on the claimant's 2020 schedule C, which was admitted into the record as Remand Exhibit 11, does not match the sales documentation submitted by the claimant.<sup>5</sup>

Further, the claimant was unable to provide any records or receipts showing the purchase of supplies, equipment, or inventory. However, she later testified that she had provided a comprehensive accounting of her business expenses and revenue to a third party who prepared and filed her 2020 taxes on her behalf. In order to file an accurate return with the IRS, the claimant, or her third-party tax-preparer, would need to have specific documentation providing an accurate accounting of all expenses incurred by the claimant in the course of her self-employment during the 2020 calendar year. Her inability to provide this same information to the review examiner further detracts from the overall credibility of her testimony.

Finally, while one of the documents admitted as a portion of Remand Exhibit 5 appears to be a receipt for the sale of a piece of furniture in Massachusetts, the only date listed on this document is August 22, 2021. Further, there is no indication from this document that this piece was

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<sup>4</sup> Exhibit 5 is 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 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).

<sup>5</sup> Remand Exhibit 11 is also part of the unchallenged evidence introduced at the hearing and placed in the record.

refurbished or sold by the claimant.<sup>6</sup> Such documentation does not bolster the claimant's contention that her furniture restoration business had been in operation since early 2020. In light of the aforementioned, we see no reason to disturb the review examiner's credibility assessment regarding the claimant's self-employment.

In reviewing the record as a whole and preparing his consolidated findings, the review examiner identified additional inconsistencies within the claimant's testimony that detracted from her overall credibility. The claimant testified that she had, for a short time, been married to the individual from whom she sublet her workspace. Consolidated Finding # 10. When asked to clarify whether the claimant was married to this individual at the time she filed her 2020 taxes, the claimant was unable to confirm whether she was still married. *See Id.* The claimant also testified that she used most of the back-pay she received from her Social Security Disability benefits (SSDI) to cover the costs of starting up her furniture restoration business. Consolidated Finding # 7. However, she later contradicted this testimony when she stated that she used the back-pay from her SSDI to purchase a vehicle.

Because the claimant has COPD, she has been on strict quarantine since the beginning of the COVID-19 pandemic. *See Consolidated Findings ## 5–8.* She testified that her pulmonologist forbade her from working due to the increased risk involved with direct contact with members of the public. However, she also testified that she spent a portion of her quarantine with her daughter in a location other than her given address in Massachusetts and traveled to and from Florida on two different occasions in 2020. Such actions appear facially inconsistent with the claimant's testimony regarding her doctor's strict quarantine instructions and consequently detracts from her testimony that she was medically precluded from working due to her substantially increased risk from exposure to COVID-19. We concur with the review examiner's assessment that these inconsistencies detract from the overall credibility of the claimant's testimony. As such, we see no reason to disturb the review examiner's credibility assessment on appeal.

We do note that, during the hearing, the review examiner provided commentary about his preliminary assessment of the claimant's testimony. While such a course of action is inadvisable, we believe the review examiner was induced to provide some information about his decision-making process. The claimant repeatedly ignored the review examiner's warnings that he was not able to make any final decisions about her testimony until he had completed his review of the record, instead demanding assurances from the review examiner that he would find her testimony credible. Had the review examiner declined to provide such commentary, the record indicates that the claimant would have continued to escalate her disruptive behavior, deliberately interfering with the review examiner's duty to obtain additional evidence in accordance with the Board's remand order.

We generally caution against providing parties with such preliminary assessments, as it can confuse both the parties and the record. However, under these particular circumstances, we believe the statements made by the review examiner constitute harmless error. The claimant was aware that the review examiner had not yet completed his review of the entire record at the time of the hearing and therefore could not provide her, or the Board, with any final decisions regarding his assessment of the claimant's testimony. In accordance with his duty to receive and consider all

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<sup>6</sup> Remand Exhibit 5 is also part of the unchallenged evidence in the record.

relevant and reliable evidence, the review examiner collected the claimant's testimony and conducted a comprehensive review of all material evidence in the record. Only after completing this process was the review examiner able to issue his finalized consolidated findings and credibility assessment to the Board. As the review examiner explained to the claimant, the credibility assessment he submitted to the Board reflects an analysis of *all* documentary and testimonial evidence of record. We, therefore, do not believe the review examiner's commentary at the hearing is inconsistent with his final credibility assessment.

We have no doubt that the claimant's life was substantially disrupted by the impact of the COVID-19 pandemic, particularly considering her serious medical conditions. *See* Consolidated Finding # 6. However, she has failed to meet her burden to show that she was self-employed as a furniture restorer in Massachusetts, or that any alleged self-employment was negatively impacted by the COVID-19 pandemic. *See* Consolidated Findings ## 11, 12, and 14.

We, therefore, conclude as a matter of law that the claimant has not met her burden to show that she was in unemployment within the meaning of the 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 December 6, 2020.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 29, 2021**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

**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