

The claimant was not working as a self-employed carpenter in Massachusetts in 2020 when the COVID-19 pandemic hit, as he was incarcerated until May of 2020. He was unable to provide credible evidence showing that he had jobs lined up in 2020 that were canceled as a result of the COVID-19 public health emergency. Held he was ineligible for PUA benefits.

**Board of Review
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Issue ID: N6-H47D-LMDH

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 May 24, 2020, which was denied in a determination issued on March 15, 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 June 11, 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 additional evidence pertaining to the claimant's employment status in 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 did not show that he had work as a self-employed carpenter in Massachusetts that was cancelled due to COVID-19, 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 on May 29, 2020, with an effective date of May 24, 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 indicated in his PUA application that he was impacted by a COVID-19 reason on May 28, 2020.
3. The claimant indicated in his PUA application that he earned \$20,000 in 2019.
4. The claimant was not employed in Massachusetts in 2019.
5. The claimant was incarcerated from December 2019 through May 28, 2020. The claimant was released on May 29, 2020.
6. The claimant did not perform work in Massachusetts in 2020.
7. The claimant did not have any carpentry jobs lined up during or after March 2020.
8. At any point after May 24, 2020, the claimant did not return to work.
9. The claimant did not report any earnings in his claim for benefits for the week ending June 6, 2020.
10. The claimant lives in [City], Massachusetts.
11. On March 15, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits beginning the week ending February 8, 2020.
12. The claimant appealed the DUA's determination.

[Credibility] Assessment:

The claimant offered inconsistent testimony between the original hearing and the remand hearing.

During the original hearing, the claimant maintained that he had not worked prior to filing his PUA claim in May 2020 because work was slow and the contractors he worked for previously did not have any jobs for him. During the remand hearing, however, the claimant admitted that he had been incarcerated beginning in December 2019 and was not released until May 29, 2020.

The claimant went on to allege that he had been offered "a ton of work" in March 2020 and could not do it because he was incarcerated and prison work release programs were stopped due to COVID-19. The claimant maintained that mere days after his release on May 29, 2020, he worked for three days on a kitchen job that he

had been scheduled to complete in March (while he was incarcerated) and alleged that was the only job he had been scheduled for and that he did not work for the rest of the year due to COVID-19.

The claimant maintained that he earned \$2,400 for the kitchen job and was paid another \$150 “for nails,” alleging that he was pre-paid for this job in March despite his incarceration at that time. The claimant provided a self-prepared 2020 federal tax return which showed gross and net earnings of \$2,550, presumably the \$2,400 plus the \$150 for materials. However, the claimant did not report any earnings in his request for weekly benefits for the first week of June 2020; his self-prepared 2020 Schedule C showed no expenses, not even for the nails; and he was not responsive to the Board’s request for additional corroborating documentation. Given this, it is not credible or believable that he performed this work. The claimant alleged that he did not perform any other work in 2020 because the two contractors he consistently worked for had no work for him. The claimant maintained that he had COPD and could not risk working during the pandemic. It is not believable that the claimant would be able to work inside a customer’s house for three days in May /June 2020 during the COVID lockdown yet not be able to work after that date.

When asked why he indicated he had earned \$20,000 in 2019 on his application when he reported \$10,200 gross on his self-prepared 2019 federal tax return, the claimant maintained that he was paid in cash, never received 1099s, and was not sure of his exact income. However, the claimant also maintained that the contractor had sent 1099s to the IRS and because of this, the IRS has alleged that he has been underreporting his income and he was now “in trouble” with the IRS, with the \$20,000 figure being what the IRS told him he earned. The claimant’s assertions about the 1099s are inconsistent.

It is also noteworthy that the claimant was not forthcoming that he was incarcerated. He filed for benefits on the day he was released which was shortly before allegedly starting the kitchen job. Given the above inconsistencies in the testimony and the general lack of documentation, it is not clear when in 2020 the claimant earned the income listed in the 2020 tax return or even if the return was authentic or had been created in an effort to obtain PUA benefits. It is also unclear the amount of the claimant’s earnings in 2019 due to his testimony concerning the 1099s and the IRS. Thus, no findings of fact were made indicating that the claimant actually performed services in Massachusetts in 2019 or 2020.

Most notably, the claimant was not responsive to the Board’s request for documentation. The claimant failed to provide Massachusetts [s]tate income tax returns for 2019 and 2020. The claimant also failed to provide documents of payments to the claimant for services from January 2019 through December 31, 2020 such as checks, tax documents, business records, correspondence, account records, bank statements, text messages, emails, 1099s, invoices, proof of cancelled jobs, contemporaneous communications from contractors, computer applications of income received, any proof of earnings or anything at all beyond the 2019 and 2020 federal tax returns. He alleged both that he kept no records and that he had no

time to get documents since learning the date of the remand hearing. The claimant also failed to provide business records in connection with self-employment from January 1, 2019 through December 31, 2020 such as profit and loss statements, inventory, purchase costs/receipts, list of expenses, advertising records/costs, appointment book, or appointment confirmations. The claimant did not produce any 1099s he received in 2019 or 2020, nor did he produce any invoices issued to customers or businesses for services performed in 2019 or 2020. The claimant did not produce any contemporaneous correspondence from customers or prospective customers to support his contention that he was self-employed in 2019 and 2020. The claimant did not provide proof of any carpentry jobs cancelled in 2020 such as contracts, emails, witness testimony, or letters from customers.

Based on the above inconsistencies and failure to produce almost all of the requested documentation to corroborate his contentions, the claimant was not found to be credible and the federal 2019 and 2020 self-prepared tax returns alone are not credible. In summary, the claimant did not present credible evidence showing that he had work scheduled in Massachusetts in 2020 that was cancelled due to COVID-19 or that he was working in Massachusetts when that employment was affected due to a COVID-19 reason.

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 his burden to show that he is eligible for PUA benefits.

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. *See* Pub. L. 116-136 (Mar. 27, 2020), § 2102. In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act. Section 2102(a)(3)(A)(ii)(I) of the CARES Act defines a covered individual as someone who is otherwise able and available to work, "except the individual is unemployed, partially unemployed, or unable or unavailable to work due to a COVID-19 listed reason." The U.S. Secretary of Labor has advised that self-employed individuals "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 be eligible pursuant to § 2102(a)(3)(A)(ii)(I)(kk). *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), Attachment I (kk)(1), p. I-4. Therefore, in order to be eligible for benefits, the claimant must show that he was otherwise able and available to work, but that he lost work as a result of the COVID-19 public health emergency for a reason listed under the CARES Act.

After remand, the review examiner found that the claimant did not work in Massachusetts in 2019 or 2020, and he did not have any carpentry jobs lined up during or after March, 2020. *See* Consolidated Findings ## 4, 6, and 7. 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 that he did have work 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). We believe her assessment is reasonable in relation to the evidence presented and see no reason to disturb these findings.

The consolidated findings show that the claimant was incarcerated from December, 2019, until May 29, 2020. Consolidated Finding # 5. The Department of Labor has determined that an incarcerated person is not "otherwise able and available to work within the meaning of the applicable State law." *See* UIPL 16-20, Change 2 (Jul. 21, 2020), Attachment I, ques. 9, p. I-4. As such, the claimant cannot be said to have been "otherwise able and available to work," for any jobs had they been scheduled prior to his release.

He has also not shown that, following his release, he was out of work for a listed CARES Act reason. The claimant testified that he was unable to get jobs upon his release because the contractors he usually worked with had no work for him, and that he was supposed to be released in March, at which time he had a lot of job offers, but his release was pushed back due to COVID.¹ An individual's inability "to find a job because some businesses have closed and/or may not be hiring due to COVID-19 is not an identified reason [under the CARES Act]." *See* UIPL 16-20, Change 2, Attachment I, ques. 14, p. I-6. Here, the claimant did not have any carpentry jobs lined up after March 2020, nor did he return to work at any point after May 24, 2020. Consolidated Findings ## 7 and 8.

We, therefore, conclude as a matter of law that the claimant has not met his burden to show that he was out of work in Massachusetts due to the COVID-19 public health emergency for any reason allowed under the CARES Act, § 2102(a)(3)(A)(ii)(I).

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week ending May 30, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 21, 2022



Charlene A. Stawicki, Esq.
Member



Michael J. Albano

¹ 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).

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

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.

JCT/rh