

The claimant failed to establish that she had house cleaning work in 2020 that was negatively affected by the COVID-19 public health emergency, as alleged. She is therefore not entitled to PUA benefits.

**Board of Review
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Issue ID: N6-H4L9-68MP

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. On March 18, 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. 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 in a decision rendered on September 30, 2021. We accepted the claimant's application for review.

The review examiner concluded that the claimant was ineligible for PUA benefits on the basis that the claimant failed to present sufficient evidence to verify receiving income from the performance of services in Massachusetts in 2020. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, the documents produced with the claimant's Board appeal (payment checks) and the claimant's appeal, we remanded the case for additional evidence for the review examiner to consider the documents submitted with the claimant's Board appeal. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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, a Massachusetts resident, was ineligible for PUA benefits because she failed to prove that she had been working as a house cleaner and lost that work in 2020 due to the COVID-19 public health emergency, 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 December 6, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on this claim.
2. The claimant filed the PUA claim using a [Massachusetts] address.
3. The claimant reported \$0 in 2019 income on her initial application for PUA.
4. The claimant had no job offer in 2019 or 2020.
5. The claimant was not working as a housecleaner in 2019 or 2020.
6. In 2019, the claimant received \$2,092 in Social Security benefits.
7. In 2020, the claimant received \$5,292 in Social Security benefits.
8. The claimant has multiple bank statements from 2019 and one from February 2, 2020, through March 5, 2020. The bank statements show monthly deposits to her bank account from Social Security.
9. In March of 2020, the claimant's children ages 15 and 18, were home remote learning because their schools were closed due to COVID-19. The claimant's children continued to attend school remotely for the remainder of the 2020-2021 school year.
10. The claimant did not stop working in 2020 due to the closure of her children's schools. She was not working in 2020.
11. The claimant did not stop working due to her clients telling her to stay away due to COVID-19. She was not working in 2020.
12. The claimant did not continue to work after the closure of her children's schools. She was not working prior to the closures.
13. The claimant's only income in 2019 and 2020 was from government sources, such as Social Security benefits. There was no decrease in self-employment income from 2019 to 2020.
14. On March 18, 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.
15. The claimant has a document from the Department of the Treasury Internal Revenue Service dated May 31, 2021, stating she is owed a refund of \$551.58 from changes to her 2020 1040 form. This represents money she received for a stimulus recovery rebate credit.

16. Beginning in October 2021 and until December 2021, the claimant worked at a gas station.

Credibility Assessment:

The claimant testified that she worked as a housecleaner in 2019 and 2020 for three clients. Although she indicated in her initial claim filing that she had \$0 income in 2019, she maintained she worked regularly throughout that year and until her children's schools closed in March 2020 due to COVID-19. Specifically, the claimant testified she worked 18–20 hours per month for client [A] from June of 2019, until January 5, 2020, and was paid \$150 cash biweekly. She further asserted she worked 1 day per week, 35 hours per month for client [B] beginning in May 2018 until February 27, 2020, and was paid \$100 cash weekly. Finally, she contended she worked 18-20 hours per month for her aunt beginning May 1, 2019, until April 4, 2020, for which she was paid \$300 cash per month.

The amount of money the claimant testified that she was earning was significant enough to be reflected in banking, tax, or communication records. The claimant failed to provide substantial and credible evidence to support her testimony that she was working in 2019 and/or 2020. The claimant testified that she was paid in cash and used the money to pay her bills. She submitted multiple bank statements from 2019 and one from February 2020, showing numerous transactions including small cash deposits to her account on various dates throughout each month. However, the dates and amounts of the cash deposits are inconsistent with her testimony of when she was paid for her services and how much she was paid. The claimant could not credibly explain what the deposits were for, or why the deposit amounts were far less than the amounts she claimed she was paid from each client. The claimant's explanation for these deposits, that she "sometimes made cash deposits," was vague and not persuasive.

The claimant also submitted a few pages of her joint 2019 tax return. These pages are in direct conflict with her testimony as they list her occupation as a housewife and not as a housecleaner. Furthermore, the Form 1040 is filed jointly, and therefore it cannot be verified as to whether any of the adjusted gross income was earned by the claimant. It is also noteworthy that the claimant did not submit a Schedule C, which would show her self-employment income if it was reported on her federal tax return.

The claimant provided a screenshot of an amended 2020 tax return being received by the IRS on June 1, 2021, which included a message that it would take up to 16 weeks for processing. The claimant's name is not part of the screen shot, nor is there any other identifying information contained in it. Furthermore, although she provided a letter from the IRS indicating she was owed a 2020 tax refund, she failed to provide any part of the tax return itself. The claimant provided both a handwritten letter dated June 11, 2021, as well as a September 21, 2021, text message to support

her testimony that she worked for [A]. The letter is handwritten and is not contemporaneous to the time she would have been working. The text is not from the time the claimant would have been working and does not speak to what the claimant was doing, or when she was working. Therefore, these documents do not support her testimony that she was working for [A]. As to [B], the claimant provided a handwritten letter. Again, the letter was written far after the time she allegedly worked. As to the work for her aunt, the claimant has no documentation of the work at all in any form. When asked how she communicated with her clients, the claimant testified that it was mostly by text messages but that she has a new phone and lost her text messages. In short, the claimant has no contemporaneous communications between her and her alleged clients, and this detracts from her testimony that she was working for multiple clients over the course of several years. Although handwritten documents, or documentation obtained at a later time, are not inherently credible, the state of the record is such that the veracity of the statements is undercut by the conspicuous lack of authentic and contemporaneous documentation of the claimant's work. It is not likely that the claimant worked for several years (since approximately May 2018 to the spring of 2020) yet does not have authentic documentation which ties her income to the work.

Given the discrepancies between the claimant's testimony and the documentation she provided during the hearing, her testimony about her work is not accepted as credible. It follows also, then, that the claimant's testimony that she stopped working due to the COVID-19 pandemic is also not accepted as credible.

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 is ineligible for PUA benefits.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under the Coronavirus Aid, Relief, and Economic Security (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. 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 a self-employed individual who experienced a significant diminution of his or her customary or usual services because of the COVID-19 public health emergency.² Further, a claimant must file for PUA benefits in the state where he or she was

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

² See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), Attachment I, p. I-1.

working at the time he or she became unemployed.³ Therefore, in order to be eligible for benefits, the claimant must show that she had work in Massachusetts that was negatively impacted by the COVID-19 pandemic.

In rendering her consolidated findings, the review examiner provided an extensive credibility assessment detailing her reasons for determining that the claimant's testimony and documents, which purported to show that she worked in 2019 and 2020, lacked credibility. 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.) Based upon the record before us, we see no reason to disturb the review examiner's credibility assessment and the corresponding findings.

Specifically, the review examiner found that the claimant did not work as a house cleaner in 2019 or 2020. *See Consolidated Finding # 5*. Because the claimant has failed to prove that she had been working just before December 6, 2020, the effective date of her claim, she has not shown that she experienced a significant diminution of her customary or usual services because of the COVID-19 public health emergency.

We, therefore, conclude as a matter of law that, because the claimant has not met her burden to show that she became unemployed for the listed reason related to COVID-19 under the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk), she is not eligible for PUA benefits.

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

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 - April 13, 2022



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.

BGM/rh