

The claimant failed to present credible documentary evidence that he was self-employed in 2019 or 2020, as required under the Continued Assistance Act. He is therefore not entitled to continue receiving PUA benefits.

**Board of Review
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Issue ID: N6-H54D-5T23

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 April 28, 2021, the DUA sent the claimant a determination informing him that he was not eligible to receive PUA benefits as of the week beginning December 27, 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 in a decision rendered on November 1, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to provide documentation substantiating employment, self-employment, or the planned commencement of employment or self-employment, as required by § 241 of the Continued Assistance Act.¹ 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 for additional evidence to consider employment documents submitted with the claimant's appeal to the Board. 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 was ineligible for PUA benefits beginning December 27, 2021, because he failed to present documentation of Massachusetts work prior to the effective date of his claim, is supported by substantial and credible evidence and is free from error of law.

Consolidated Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment are set forth below in their entirety:

¹ Continued Assistance for Unemployed Workers Act of 2020, Division N, Title II, Subtitle A of the Consolidated Appropriations Act, 2021 (Dec. 27, 2020).

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) with an effective date of December 6, 2020. The claimant's weekly benefit amount was determined to be \$267.
2. The claimant founded a New Hampshire glass and mirror repair company in 2015.
3. In 2019, the claimant performed self-employed glass and mirror repair services in Massachusetts in July and from September through December. The claimant rarely works in the winter months due to a lack of demand for window repair in the colder months.
4. In 2020, the claimant only worked in January 2020 performing glass and mirror repair services and did not work again anywhere for the remainder of the year due to COVID-19 clients being closed or not wanting him in their buildings.
5. In 2020, the claimant did not perform any confirmed work in Massachusetts. The claimant did not provide any 2020 Massachusetts bank statements, invoices, or 1099s to corroborate his 2020 Massachusetts tax return.
6. The claimant did not provide exhaustive documentation to show the origin of his reported 2019 and 2020 income. He instead provided October 2019 thru December 2019 bank statements, 2019 invoices for July, September, October, and December, three (3) 2019 1099s, and a 2019 Schedule C. He provided one (1) 2020 1099 for an amount less than his filed 2020 Schedule C gross receipts reported amount. Lastly, he submitted a non-filed handwritten 2020 Schedule C created for appeal purposes.
7. The claimant filed his 2019 Federal tax return on January 6, 2021, the claimant did not file an extension prior to his DUA submission of his 2019 Federal tax return. The claimant prepared his 2019 Massachusetts tax return on May 18, 2022.
8. The claimant's 2019 Massachusetts tax return was not electronically filed on May 18, 2022. The 2019 Massachusetts tax return was not filed in any other manner.
9. The claimant submitted a 2019 Massachusetts tax return to DUA for appeal purposes only.
10. The claimant did not file an extension to file his 2020 Massachusetts or Federal tax return.
11. The claimant's 2020 Massachusetts and Federal tax returns were electronically filed for appeal purposes on May 18, 2022.

Credibility Assessment:

The claimant's testimony is not found to be credible. Although, the claimant provided substantial and credible evidence that he is the owner of a New Hampshire glass and window repair company since 2015, he has failed to provide substantial or credible evidence regarding his self-employment throughout 2019 and 2020. He has also demonstrated a consistent failure to provide requested documents, or he submits documents he admits were created solely for appeal purposes. These actions have diminished his overall credibility regarding the authenticity of his documents such as the submitted 2019 Massachusetts tax return, 2020 Schedule C, and 2020 Massachusetts and Federal tax returns.

The claimant failed to comply with or provide substantial or credible evidence in accordance with the Board of Review's document requests. He instead provided irrelevant documents from the years of 2015 and 2018 instead of complying with the Board of Review's express time specific requests. He also submitted documents for the express purpose of PUA eligibility such as his handwritten 2020 Schedule C which was never filed. He also purportedly filed a 2019 Massachusetts tax return and 2020 Massachusetts and Federal tax return after his Remand hearing. However, these actions are found to be solely for the purpose of his appeal. Due to a lack of corroborating documents to support his 2020 Massachusetts and Federal tax return (one 2020 Connecticut company 1099), and the May 2022 purported filing of his 2019 Massachusetts tax return, the contents of those documents are not found to be credible as it raises a question of their authenticity.

During his May 13, 2022, hearing, the claimant testified that he did not file his 2020 State or Federal tax return. He stated he did not have the money to file them, and he had not filed an extension. He was asked by the Board of Review to provide documentation to prove that his 2020 work was in Massachusetts. During the May 13, 2022, hearing, the claimant stated he had one job in 2020 for \$3,400 which was reflected in a 2020 1099 for a Connecticut company and a handwritten 2020 Schedule C. However, he testified this 2020 1099 was for work performed in Massachusetts despite the document indicating it was work for a Connecticut company. The claimant testified that his handwritten 2020 Schedule C did not contain expenses because he was supplying labor and the person he performed the work for provided the supplies. He also testified he created the handwritten 2020 Schedule C solely for the purposes of his PUA appeal and it was not filed. Therefore, the claimant has established a willingness to create documents for the purpose of PUA eligibility which further diminishes his credibility and indicates that all or some of the documents submitted may not be genuine and, in this appeal, likely are not. However, the claimant testified he could produce documentation to "connect the dots" between his 2020 work and Massachusetts as requested by the Board of Review. He failed to provide documentation to support his testimony that he performed work in Massachusetts in 2020 by the closure of the record.

Since the conclusion of the claimant's May 13, 2022, hearing, the claimant has apparently filed his 2020 Massachusetts and Federal taxes on May 18, 2022. Those documents report a different total "gross receipts" than what was reflected in his originally submitted handwritten 2020 Schedule C (admittedly created for his appeal). Also, the updated version of his 2020 Schedule C contains expenses. He failed to provide any invoices, receipts or 1099s to support this different reported 2020 income. The claimant's 2019 Massachusetts tax return was also filed on May 18, 2022, while his Federal 2019 tax return was filed on January 6, 2021, and submitted prior to the May 13, 2022, hearing. The 2019 Massachusetts tax return is noted by the claimant as not wanting them electronically filed. Therefore, it is reasonable to conclude that the claimant's 2019 Massachusetts tax return was assembled solely to comply with the Board of Review's request like the submitted handwritten 2020 Schedule C was created solely to comply with a request, but like that Schedule C, was also not filed and therefore is not genuine. It is not plausible that the claimant would file his 2019 Federal tax return months before filing his Massachusetts tax return. However, even if his 2019 Massachusetts tax return was in fact filed, it was clearly compiled and subsequently filed for purposes of the Board of Review appeal which again raises the question of authenticity.

The claimant's 2020 Massachusetts tax return states the claimant does want the return to be electronically filed unlike his notation within the 2019 Massachusetts tax return. Therefore, presumably it was. Consequently, the claimant's May 13, 2022, testimony that he could not file his 2020 tax return due to a lack of funds is not credible since he presumably paid to have his 2020 Massachusetts and Federal tax return filed as well as his 2019 Massachusetts taxes filed in the same week in order to comply with the May 20, 2022, document submission deadline.

The claimant testified that he could comply with the Board of Review's request to provide exhaustive documentation reporting income paid to him for his business services during the time of January 1, 2019, thru January 1, 2021. The claimant understood he could satisfy this requirement with a variety of documents such as bank statements and the like. He instead provided what he designated as "invoices" from 2015 thru 2019, bank statements for October thru December 2019, 2019 [sic] invoices for July, September, October, December, three (3) 2019 1099s, and a 2019 Schedule C. He also provided one (1) 2020 1099 for an amount less than his filed 2020 Schedule C gross receipts reported amount. Lastly, he submitted a non-filed handwritten 2020 Schedule C admittedly created for appeal purposes.

The claimant's inability or unwillingness to satisfy the Board of Review's document request is found to be unreasonable. The claimant has been in receipt of the Board of Review's specific requests since March 2022 when his Remand hearing was originally scheduled. However, instead of preparing his submission in accordance with the Board's written request, he continued to contend in his appeal statements that he had already complied with the request and in fact did not feel a hearing with the Review Examiner was necessary. He further requested that he wanted the Board of Review to serve as the fact finder with the previously

submitted documents. The claimant was not in compliance with the Board of Reviews requests prior to the Remand hearing nor a week after when the record closed.

The claimant was advised that although all Board of Review requests were restated and reviewed during the May 13, 2022, hearing he should utilize their written requests as a “checklist” to ensure strict compliance. However, the claimant failed to do so. He also failed to comply with the Review Examiner’s October 2021 less exhaustive request of providing his 2019 and 2020 State and Federal tax return with all pages and schedules as well as all of his 2019 and 2020 1099s. He has now failed to comply with the Review Examiner’s and the Board of Review’s requests. The assembling of documents for the sole purpose of an appeal is not a credible action, neither is failing to comply with clear and written document requests.

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. After such review, the Board adopts the review examiner’s consolidated findings of fact except as follows. We reject the portions of Consolidated Findings ## 3 and 4, which state that the claimant performed work in 2019 and 2020, as they conflict with conclusions reached in the review examiner’s credibility assessment. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we agree with the review examiner’s original legal conclusion that the claimant is ineligible for further PUA benefits.

The claimant in this case seeks PUA benefits, an 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.² In December, 2020, Congress added an additional requirement for individuals to continue receiving PUA benefits. Individuals who applied for PUA benefits and received a payment of PUA on or after December 27, 2020, must provide documentation substantiating employment, self-employment, or the planned commencement of employment or self-employment.³ It is intended to show a recent attachment to the labor force and to prevent fraud.⁴ The documentation must establish proof of employment, self-employment, or the planned commencement of employment or self-employment at some point between the start of the applicable tax year and the PUA claim effective date.⁵

It is worth noting that nothing in the Continued Assistance Act or guidance from the U.S. Department of Labor states that the documented work must be located in the filing state or in any

² Pub. L. 116-136 (Mar. 27, 2020), § 2102.

³ See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), 4(b)(ii), p. 5.

⁴ See UIPL 16-20, Change 4, Attachment I, C(2), p. I-10.

⁵ See UIPL 16-20, Change 4, Attachment I, C(1), p. I-4.

other particular location.⁶ All that is required of a claimant is to produce substantial and credible documentary evidence that the claimant worked or had planned to commence work during the requisite time period. Since the claimant’s effective date is December 6, 2020, he had the burden to show documentary proof of work or the planned commencement of work at any point between January 1, 2019, and December 6, 2020.

In her credibility assessment, the review examiner explains that she did not find any of the claimant’s documentary evidence to be 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.)

Specifically, the review examiner noted that the claimant testified that he worked in Massachusetts for a company in 2020 but submitted a Form 1099 from this company indicating that the work was performed in Connecticut. He submitted an updated Schedule C for his 2020 federal tax return which reported different total gross receipts than in the Schedule C that he had originally submitted with his appeal, and he did not provide any invoices, receipts or Form 1099s to support the different income amount. She concluded that the updated form had, in fact, never actually been filed with the IRS, but was created for the purpose of this pending appeal. Similarly, she discredited his 2019 Massachusetts tax return as not genuine, as it was purportedly filed immediately after the remand hearing. Further, given his failure to provide all pages and schedules from his 2019 and 2020 tax returns and all his Form 1099’s from 2019 and 2020, she concluded that his evidence was not credible, as he had created documents for the sole purpose of PUA eligibility. We believe her assessment is reasonable in relation to the evidence presented.

Having rejected the documentary evidence presented as not credible, the claimant has not met his burden to prove that he was self-employed in 2019 or 2020.

We, therefore, conclude as a matter of law that the claimant has failed to substantiate any employment or self-employment as required by the Continued Assistance Act, § 241.

The review examiner’s decision is affirmed. The claimant is not eligible for PUA benefits as of the week beginning December 27, 2020.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 8, 2022

⁶ The Board’s remand order stated, “The review examiner shall question the claimant to establish if these documents support the claimant’s contention that he was employed *within the Commonwealth* in 2019 and 2020.” The highlighted portion should not have been included.



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. declines to sign the majority opinion.

**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/AB/rh