

The claimant failed to provide documentary evidence that she had scheduled employment or an offer of employment prior to the effective date of her PUA claim. The only evidence offered was for volunteer work. Because she did not satisfy the Continued Assistance Act requirement to show a recent attachment to the labor force, she is not entitled to further PUA benefits.

**Board of Review
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Issue ID: N6-H54F-6F7J

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 8, 2020. On May 11, 2021, the DUA sent the claimant a determination informing her that she was not eligible to receive PUA benefits as of the week ending January 2, 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 in a decision rendered on December 20, 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 his 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 January 2, 2021, because she failed to present documentation of work or the planned commencement of employment at a restaurant prior to the effective date of her claim, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

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 March 8, 2020.
2. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
3. The claimant is a householder for a nonprofit house sharing association in Massachusetts (Association) that places adults with special needs in homes under contracts the Association has with the Massachusetts Department of Developmental Services (DDS).
4. The claimant has a letter dated March 29, 2021, from the acting administrator for the Association.
5. As a householder, the claimant cared for one or more adults in her home on a 24-hour basis.
6. DDS assists the Association with expenses but provides no salary for the householder's services.
7. Householders could receive volunteers from other countries on volunteer visas to assist the householder and allow the householder to work outside of the home during working hours.
8. The claimant has a letter dated April 1, 2021, from the acting administrator for the Association.
9. Due to the COVID-19 public health emergency, the DDS stopped all placements that were not emergencies.
10. The claimant is currently without a placement and no longer receiving reimbursement funds from the Association.
11. The claimant did not work for and did not have an employment relationship with the Association.
12. The monies the claimant received for hosting services is not income and is nontaxable.
13. The claimant has a letter dated December 6, 2021, from a business in Massachusetts (the business).

14. The Association and the business are unrelated to each other.
15. The claimant did not complete any paperwork to commence employment at the business.
16. The claimant did not have scheduled employment at the business within the required period.
17. The claimant received 2021 Form W-2 wage and tax statements from the business reporting gross wages of \$6,129.
18. The claimant has a pay stub from the business dated January 18, 2021, for wages earned in the period from January 7, 2022, to January 13, 2022, in the amount of \$418.07.
19. On May 11, 2021, the DUA issued the claimant a Notice of Non-Monetary Issue Determination, informing the claimant that she was not eligible to receive benefits beginning the week ending January 2, 2021.
20. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant asserted that her work for the Association was employment affected by the COVID-19 health emergency. To better understand the relationship between the claimant and the Association, the Review Examiner held the hearing record open for the claimant to provide her contract with the Association. The claimant did not do so. The former acting administrator for the Association appeared as a witness on the claimant's behalf at the remand hearing and testified that the claimant did not work for the Association, did not have an employment relationship with the Association, and was not paid an income but received reimbursement for expenses from the Association.

The claimant also asserted that she had scheduled employment at the business to begin in March 2020. To support her assertion, she uploaded the December 6, 2021 letter. The December 6, 2021 letter is not authentic to establish scheduled employment at the business within the required period. The December 6, 2021 letter was written 1 year 9 months after the alleged offer to begin work at the business. While the claimant maintained that the offer was made verbally, it is not believable that there is no contemporaneous written correspondence at all in light of the alleged business opening delays and uncertainty surrounding COVID-19. The claimant did not provide any other documentation of her intent to begin employment at the business in March 2020 or the [s]pring of 2020, which are the time frames referenced within the December 6, 2021 letter. The December 6, 2021 letter did not contain a specific original expected start date (and whether it was before or after the effective date of her PUA claim) or terms of that alleged offer of

employment. By her own testimony, the claimant admitted that she had not completed any paperwork to commence employment at the business. Although the witness's statements about this alleged employment were consistent with that of the claimant, the witness was the former acting administrator for the Association (unrelated to the business) whose only basis of knowledge stemmed from what the claimant reported. Additionally, the claimant in this matter changed her case on appeal, choosing to rely upon the purported offer of employment rather than her involvement with the Association. This too detracts from the credibility of the purported offer with the business. While the claimant provided documentation of eventual employment with the business in 2021 (through a 2021 Form W-2 wage and tax statement) and 2022 (through a paystub dated January 18, 2022 showing wages from January 7, 2022 to January 13, 2022), neither 2021 nor 2022 are within the required period.

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 affirm the review examiner's legal conclusion that the claimant is ineligible for 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 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.⁴ It is intended to show a recent attachment to the labor force and to prevent fraud.⁵

Here, the claimant asserted that she had been scheduled to begin employment between the prior tax year and the effective date. The claimant's effective date is March 8, 2020. Therefore, she must show proof of planned commencement of employment at some point between January 1, 2019, and March 8, 2020.

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(1), p. I-4.

⁵ See UIPL 16-20, Change 4, Attachment I, C(2), p. I-10.

After remand and considering the additional document which the claimant submitted with her Board appeal, the review examiner found that the claimant did not work in 2019 nor have planned commencement of employment before the effective date. *See Consolidated Findings ## 11, 12, and 16.* The claimant a householder for a nonprofit house sharing association in Massachusetts, but this was a voluntary service which was not employment. *See Consolidated Findings ## 3, 11, and 12.* The review examiner also stated in his credibility assessment that the letter produced with the claimant's Board appeal was not authentic.⁶ This left the claimant without the necessary documentary evidence proving the alleged planned commencement of employment before her effective date.

We, therefore, conclude as a matter of law that the claimant has not met her burden to present substantial and credible documentary evidence substantiating employment, self-employment, or the planned commencement of either as required by the Continued Assistance Act, § 241.

The review examiner's decision is affirmed. The claimant is ineligible for PUA benefits beginning the week ending January 2, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 9, 2023



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

⁶ A review examiner is not required to believe self-serving, unsupported, evidence, even if it is uncontroverted by other evidence. *McDonald v. Dir. of Division of Employment Security*, 396 Mass. 468, 470 (1986). "The review examiner bears '[t]he responsibility for determining the credibility and weight of [conflicting oral] testimony, . . .'" *Hawkins v. Dir. of Division of Employment Security*, 392 Mass. 305, 307 (1984), quoting *Trustees of Deerfield Academy v. Dir. of Division of Employment Security*, 382 Mass. 26, 31-32 (1980).

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