

Where the claimant showed that she had a rescinded offer to start a job on the same day that she filed her claim, Board held that she substantiated employment during the relevant period, as required by the Continued Assistance Act. She is entitled to continued PUA benefits.

**Board of Review
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Member
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Member**

Issue ID: N6-H54H-RFF7

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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective March 29, 2020. On May 18, 2021, the DUA sent the claimant a determination, informing her that she 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 and denied PUA benefits in a decision rendered on January 31, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to meet the eligibility requirements to substantiate employment, self-employment, or planned commencement of employment or self-employment, and, thus, the claimant was not eligible for further PUA benefits. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not meet her burden to substantiate employment or self-employment because she failed to establish that she worked or was going to be working in 2019 or before March 29, 2020, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact 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 29, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.

2. During 2019, the claimant did not work.
3. During 2019, the claimant did not plan to commence employment or self-employment.
4. During January 1, 2020 through March 29, 2020, the claimant did not work.
5. During January 1, 2020 through March 29, 2020, the claimant did not plan to commence employment or self-employment.
6. On May 18, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, stating that the claimant was not eligible to receive benefits beginning the week ending January 2, 2021.
7. The claimant appealed the DUA's determination.

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 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 findings of fact and deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to meet her burden to continue receiving 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 Pursuant to the Continued Assistance for Unemployed Workers Act (Continued Assistance Act)², any claimant who filed a new application for PUA benefits on or after January 31, 2021, or any claimant who received a payment of PUA benefits on or after December 27, 2020, is required to provide documentation substantiating employment, self-employment, or planned commencement of employment or self-employment at some point between the start of the applicable tax year and the PUA claim effective date.³

The claimant filed for PUA benefits effective March 29, 2020. Therefore, the claimant was required to substantiate employment, self-employment or planned commencement of employment or self-employment at some time between January 1, 2019, and March 29, 2020.

We acknowledge an ambiguity in the U.S. Department of Labor's interpretation of the period which one must substantiate employment or self-employment. Though the period is defined, "as some point between the applicable taxable year and the date of filing," the examples which follow show the Department's intention that the period to substantiate one's employment is between the

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

² Pub. L. 116-260 (Dec. 27, 2020), § 241.

³ See U.S. Department of Labor (DOL) Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), 4(b), p. 5, and Attachment I, C(2)(b), p. I-11.

applicable tax year and the claimant's effective date. In effect, the claimant must show a connection to the labor force before he or she became unemployed.⁴

The claimant testified that she was offered employment at a repair shop with a start date of April 1, 2020.⁵ In support of her testimony, the claimant provided a job offer letter from the shop's General Manager, dated March 12, 2020, which states, "Your job will commence on 04/01/2020 and your starting salary will be \$18 per hour." *See* Exhibits 9 and 11. The claimant also submitted a second letter from the same General Manager, dated May 20, 2021, which again states that the claimant was offered a position that would commence on April 1, 2020. *See* Exhibit 12.⁶

Because the job offer had a start date that was past the claimant's claim effective date, the review examiner found that the letters cannot be considered for the purpose of employment substantiation and concluded that the claimant did not plan to commence employment during the relevant period.

Normally, we would agree with the review examiner's decision that the claimant did not substantiate her planned employment during the relevant period. However, we are also mindful of G.L. c. 151A, § 74, which requires the Unemployment Insurance Law be construed liberally in aid of its purpose, which is to lighten the burden which falls on the unemployed.

The findings and record before us show that the claimant was to commence employment on April 1, 2020, four days after the effective date of her claim. She reported this date as the first day she was impacted by COVID-19 on her initial PUA application. *See* Exhibit 1. We note that the effective date of March 29, 2020, was automatically generated by the DUA, because this was the first day of the week the claimant filed her PUA claim. In light of the unique circumstances presented here, the purpose of the unemployment statute, and the ambiguity in DOL's guidance, we decline to penalize the claimant by denying PUA benefits because the DUA assigns an effective date on a Sunday.

We, therefore, conclude as a matter of law that the claimant has met the eligibility requirement to substantiate the planned commencement of employment, as meant under the Continued Assistance Act.

⁴ *See* UIPL 16-20, Change 4, Attachment I, C(2)(b), p. I-11.

⁵ While not explicitly incorporated into the review examiner's findings, this part of the claimant's testimony 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).

⁶ Exhibits 9, 11 and 12, as well as Exhibit 1 noted below, are also part of the unchallenged evidence introduced at the hearing. a

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning January 2, 2021, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 11, 2023



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.

KB/rh