

The claimant had no recent work history and did not produce credible documents substantiating her alleged planned commencement of employment between 2019 and her 2020 claim effective date. Pursuant to the requirements of the Continued Assistance Act, she was not entitled to continue receiving PUA benefits after December 27, 2020.

**Board of Review
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Issue ID: N6-H54K-RJP7

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, which was denied in a determination issued on May 10, 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 October 15, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had 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 to afford the claimant an opportunity to submit additional evidence to show that she was offered work 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 was ineligible for PUA benefits because she failed to present documentation of a Massachusetts job offer, 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 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 March 8, 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 has no recent work history. The claimant's most recent employment was in 2013.
3. The claimant was not employed in 2019.
4. The claimant did not file federal or Massachusetts state tax returns in 2019 because she did not earn any wages.
5. The claimant was not employed in 2020.
6. The claimant filed federal and Massachusetts state tax returns in 2020 and has complete copies of these returns. The claimant did not earn any wages in 2020. The claimant's only reported income in 2020 on the federal and Massachusetts state tax returns is unemployment compensation. The claimant did not report any Social Security Disability benefits on her 2020 federal tax return.
7. A personal training fitness company (fitness company) registered as a business with [City] on March 2, 2018 with an expiration date of March 2, 2022. The owner's initials are [A].
8. The claimant was not offered employment by the fitness company in 2020. The claimant did not have a valid offer of employment in Massachusetts in 2020 that was affected by COVID-19.
9. The claimant does not have contemporaneous correspondence, job advertisements, applications, offers, communications, or onboarding materials from the fitness company.
10. The claimant received Social Security Disability benefits in 2019 and 2020. The claimant has a publication from the Social Security Administration called "Working While Disabled: How We Can Help" outlining the Social Security Disability rules for those getting disability benefits and currently working or want to [sic].
11. On March 10, 2020, the Governor of Massachusetts declared a state of emergency due to COVID-19. On March 15, 2020, effective March 17, 2020, the Governor of Massachusetts prohibited gatherings of over 25 people.
12. On March 15, 2020, it was declared that a public health emergency exists within [City].

13. On March 23, 2020, effective March 24, 2020, the Governor of Massachusetts temporarily closed non-essential businesses and prohibited athletic activities that bring participants in close, physical contact even when involving 10 or fewer people, regardless of where conducted.
14. On March 22, 2021, the DUA issued the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive benefits beginning the week ending January 2, 2021.
15. The claimant appealed the DUA's determination. The claimant timely appealed the March 22, 2021, Notice of Non-Monetary Issue Determination.

Credibility Assessment:

The claimant provided credible documentation in the form of [City] "doing business as" database search results establishing that the fitness company is a legitimate personal training business registered in [City]. The business was established on March 2, 2018, and is owned by [A]. Though this documentation establishes the legitimacy of the business, it does not, alone, corroborate the claimant's assertions that she was offered employment by [A] as a greeter for the fitness company in March 2020.

The review examiner did not make specific findings of fact about an offer of employment from the fitness company because the review examiner does not find it credible or believable that the fitness company offered the claimant employment as a greeter for the reasons set forth below.

In the original hearing, the credibility of the original letter was questioned because it read that the offer was withdrawn on March 10, 2019, because of the COVID-19 pandemic – one year prior to the onset of the COVID-19 pandemic. Given the credibility concerns with this letter, the BOR order afforded the claimant an opportunity to invite [A] to participate as a witness in the remand hearing. The claimant was not responsive to this invitation given that [A] was not presented as an additional witness. The claimant, instead, provided an affidavit from [A], dated November 8, 2021 with a corrected letter referencing that the alleged job offer rescission occurred in March 2020 instead of March 2019. While the claimant's statements during the remand hearing about the terms of the alleged job offer were consistent with the terms listed in [A]'s affidavit, the corrected letter referenced "a shut down mandate that was issued by [City] that had occurred on March 11, 2020." The March 11, 2020 date was not consistent with the dates of the orders themselves (March 10, 2020; March 15, 2020 effective March 17, 2020; March 15, 2020; and March 23, 2020 effective March 24, 2020). This date discrepancy between the corrected letter and the orders themselves was not addressed explicitly in the affidavit, nor did [A] testify during the hearing. Neither the original letter nor the corrected letter were dated. The original letter was addressed to the Department of Unemployment, while the corrected letter was submitted with the affidavit. It is

reasonable to infer that neither letter was contemporaneous with any offer of employment or rescission of employment.

Between both hearings, the claimant received ample opportunity to provide contemporaneous documentation to corroborate this alleged offer of work, such as the job advertisement flyer, a copy of her employment application, or any correspondence or communication between her and the fitness company, yet she failed to do so.

In the original hearing, the claimant also admittedly did not provide services for any employer in 2019 or 2020. In the remand hearing, the claimant confirmed that she was not employed in 2019 or 2020. She further testified that prior to filing her PUA claim, her most recent employment was in 2013. In light of the claimant's lack of recent work history, it is less credible that she was offered this alleged employment as a full-time greeter merely days before the COVID-19 state of emergency.

Despite the BOR's request for documentation, the claimant failed to provide contemporaneous documents to substantiate her alleged offer of employment. Given the remaining credibility questions relating to the employment letters on record and the claimant's failure to provide further supporting documents, her testimony that she was offered valid employment as a greeter in March 2020 and the offer was withdrawn because of COVID-19, is deemed not 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 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, except for the portion of Consolidated Findings of Fact ## 14 and 15, that states that the determination date was March 22, 2021. The record reflects the determination was issued on May 10, 2021. 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 failed to meet her burden to continue receiving 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 before January 31, 2021, 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

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.

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

In this case, the claimant attempted to meet this burden with documentation to substantiate the planned commencement of employment. Documents proving the planned commencement of employment include, but are not limited to, letters offering employment, and statements or affidavits by individuals (with name and contact information) verifying an offer of employment.⁶ A review of the DUA's electronic record-keeping system, FastUI, shows that the claimant applied for PUA benefits on June 17, 2020, with an effective date of March 8, 2020. *See Consolidated Finding # 1.* Therefore, pursuant to the applicable provisions of the Continued Assistance Act, 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 8, 2020.

Based upon additional documentation provided with the claimant's appeal to the Board, we remanded this case to the review examiner to consider the additional evidence. The consolidated findings now reflect the additional evidence. The evidence shows that the claimant has no recent work history and that she last worked in 2013. *See Consolidated Finding # 2.* The claimant did not work in 2019 or in 2020, and her only source of income was from social security disability or unemployment compensation. *See Consolidated Findings ## 3, 5, 6 and 10.*

On remand, the Board granted the claimant an opportunity to provide any contemporaneous documentation showing that she was offered employment in March, 2020. However, she failed to provide any contemporaneous letters, employment applications, job advertisements, offers, onboarding materials or any communications from the fitness center to substantiate her claims. *See Consolidated Finding # 9.* The documentation that the claimant provided in her attempt to prove that she had an offer of employment was deemed not credible by the review examiner. Based upon the record before us, we see no reason to disturb the review examiner's credibility assessment, as it is reasonable in relation to the evidence presented.

In light of these findings, the claimant failed to meet her burden to show that she worked, received an offer of employment from the fitness company, or had any other offers of employment to work in 2020.

We, therefore, conclude as a matter of law that the claimant has not met the documentation requirement to substantiate employment or the planned commencement of employment, as required under § 241 of the Continued Assistance Act.

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

⁵ The Board acknowledges the 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 applicable tax year and the claimant's effective date. The claimant must show a connection to the labor force before he or she became unemployed. *See* UIPL 16-20, Change 4, Attachment I, C(2)(b), p. I-11.

⁶ *See* UIPL 16-20, Change 4, Attachment I, C(2)(a), pp. I-10 – I-11.

The review examiner's decision is affirmed. The claimant is not entitled to receive benefits beginning the week ending January 2, 2021, and indefinitely thereafter.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 19, 2022



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.

DMY/rh