

Because the claimant presented credible documentation of work performed in Colorado in 2019, she met the Continued Assistance Act requirement to substantiate employment during the relevant period and she remains eligible for continued PUA benefits. For this limited purpose, it was not necessary that such work have been performed in Massachusetts.

**Board of Review
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Member
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Issue ID: N6-H54L-NHJF

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 beginning the week ending January 2, 2021. 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 15, 2020, which was initially approved, but in a determination issued on July 6, 2021, the DUA denied benefits beginning 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 determination and denied PUA benefits beginning the week ending January 2, 2021, in a decision rendered on March 3, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had 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 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 failed to present credible documentary evidence of employment, self-employment, or the planned commencement of either one, 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 PUA benefits, with an effective date of March 15, 2020.
2. The claimant last worked at a café in Colorado in 2019.

3. The claimant did not work in Massachusetts in 2019 or 2020.
4. The claimant was not offered employment in Massachusetts in 2019 or 2020.
5. On July 6, 2021, the DUA sent 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.
6. 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. However, we disagree with the review examiner's legal conclusion that the claimant did not meet the employment substantiation requirements for continued 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 files a new application for PUA benefits on or after January 31, 2021, or any claimant who receives 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 effective date of the individual's claim for PUA benefits.³ For purposes of employment substantiation, the Continued Assistance Act does not require that this work be within the state where PUA benefits are sought.

Since the effective date of the claimant's PUA claim is March 15, 2020, she was required to present documentation to substantiate that she had employment, self-employment, or planned to commence employment or self-employment at some point between January 1, 2019, and March 15, 2020. Finding of Fact # 2 states the claimant worked at a café in Colorado in 2019. This finding is further supported with documentation of a W-2 form from this café, which was entered as part of the record. The review examiner affirmed the determination despite this finding because this work was performed outside of Massachusetts. However, neither the Continued Assistance

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

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

³ The Board acknowledges the ambiguity in the U.S. Department of Labor's interpretation of the period during 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 that 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 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.

Act nor DOL guidance requires that the work performed during the relevant period must have been located in any particular state.

We, therefore, conclude as a matter of law that the claimant has met her burden under the Continued Assistance Act to substantiate employment between January 1, 2019, and March 15, 2020.

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

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 21, 2023



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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