

The claimant failed to provide documentary evidence that she was either employed as a cleaner or planned to commence self-employment running a home day-care center prior to the effective date of her PUA claim. 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-H54M-PMNF

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 22, 2020, which was initially approved. However, in a determination issued on August 13, 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 initial determination and denied continued PUA benefits in a decision rendered on April 4, 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 requirement to substantiate employment, self-employment, or planned commencement of employment or self-employment, and, thus, the claimant was not eligible for continued PUA benefits. 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 obtain additional evidence pertaining to the claimant's employment status in 2019 and 2020. 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 did not meet her burden to substantiate employment or planned commencement of self-employment because she failed to provide sufficient documentation from the relevant period, 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. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) with an effective date of March 22, 2020, and a weekly benefit amount of \$267.
2. The claimant stated on her PUA application for benefits that she had no recent history of employment, but she was scheduled to start a job. She also stated that she earned \$2,400 in 2019. She did not identify herself as self-employed or an independent contractor, although that was a box she could have checked.
3. The claimant has incomplete 1040 and Form 1 tax returns for 2019. The claimant's husband has a 2019 Schedule C showing gross income as a carpenter in the amount of \$8,415. Attached to the joint tax return is the husband's 2019 1099MISC in the amount of \$5,285 and the claimant's 1099MISC in the amount of \$3,130. Both 1099's were issued by the same company. The combined total matches the gross business income reflected on the husband's Schedule C.
4. The claimant has incomplete 2020 1040 and Form 1 documents. The 2020 tax documents do not show that income was earned between January 1, 2020 and March 22, 2020.
5. The claimant was not employed or self-employed between January 1, 2019 and March 22, 2020.
6. In 2019, the claimant secured a day care assistant license in June of 2019 and decided to open her own home-based day care center.
7. The claimant started the licensing process in February of 2020. As part of the process, her husband was required to get fingerprinted by the end of February of 2020.
8. The claimant started the day care application process prior to March 22, 2020. Her application was delayed due, in part, to the COVID-19 pandemic.
9. The claimant was approved to open a home-based daycare business on October 28, 2020.

Credibility Assessment:

The claimant testified that she worked as a cleaner for one company from 2017 to 2021. In 2019, the claimant testified that she worked at two locations for this company. She was paid \$15 an hour and worked 12–15 hours a week. She testified that her work schedule was not consistent; she would work on and off throughout the year. In 2019, she earned, according to her testimony, \$625 a month and was paid monthly. She testified that the cleaning company would often write one monthly check made out to her [sic] both she and her husband because he also worked for the company. She did not produce copies of any checks and she could not recall how often checks were made out to only her. The 2019 joint tax returns

show that the husband claimed all of the monies received from this company on his Schedule C even though the claimant also produced a copy of a 2019 Schedule C for part of the money received. The claimant showed a 2020 Schedule C [sic] shows gross income of \$4,600 and expenses of \$4,147. She was asked to describe her expenses (page 2 of the Schedule C was not produced). The claimant could not explain what items she had purchased. She declined to confirm that the tax returns were authentic because she is not an accountant. Importantly, the claimant had an opportunity to provide bank statements, cancelled checks, pay stubs, and expense receipts validating her employment. Production of these types of documents do not require any accounting expertise. The claimant did not provide any of these documents. It is reasonable to conclude that they do not exist. The claimant's testimony and tax documents regarding her employment as a cleaner contained too many discrepancies to be considered credible. This Examiner does not find the claimant's testimony or tax documents provide substantial and credible documentation that she earned monies from providing cleaning services during the requisite window period.

The claimant testified that she became certified as a day care assistant in June of 2019. That same year she decided to open a home-based daycare business. The claimant testified that she began working on the licensing process in February 2020. She was issued a daycare license in October of 2020. The claimant submitted credible documents which substantiate her testimony that she was planning to open a day care center prior to March 22, 2020.

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. While we concur with the credibility assessment as it relates to the documents submitted by the claimant, we also agree with the review examiner's initial legal conclusion that the claimant failed to meet the eligibility requirement to substantiate employment, self-employment, or planned commencement of employment or self-employment.

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), 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-employment²

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

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

at some point between the start of the applicable tax year and the effective date of claim.³ There is no requirement that such documentation relate to work the claimant lost because of COVID-19.

The claimant filed for PUA benefits on May 6, 2020, effective March 22, 2020. Therefore, she was required to present documentation to substantiate employment, self-employment or planned commencement of employment or self-employment at some time between January 1, 2019, and March 22, 2020.

After remand, the review examiner found that the claimant was not employed or self-employed between January 1, 2019, and March 22, 2020. *See Consolidated Finding # 5.* The review examiner concluded that the testimony and documentation provided by the claimant in that regard was not credible evidence to substantiate her employment. We agree.

The review examiner also found that the claimant started the daycare licensing process in February 2020, which required her husband to be fingerprinted, but the application was delayed due, in part, to the COVID-19 pandemic. *See Consolidated Findings ## 7–8.* In support of her claim regarding the planned commencement of this self-employment, the claimant submitted a February, 2020, request for a background check from the Department of Early Education and Care, as well as a June, 2021, handwritten letter, and emails from March, 2020, regarding the fingerprinting appointment. *See Exhibits 3 and 4.*⁴ The review examiner noted in her initial decision that the documents show an extensive licensing process which was not completed until October, 2020. *See Remand Exhibit 1.* In rendering her consolidated findings, the review examiner included a credibility assessment concluding, in part, that the “claimant submitted credible documents which substantiate her testimony that she was planning to open a day care center prior to March 22, 2020.” We read this assessment to find the documents submitted by the claimant to be credible. As to the claimant’s plan to open a daycare center, however, they merely show that the claimant applied for a daycare license prior to March 22, 2020, the effective date of her PUA claim. They do not, on their own, show that she was to open her daycare business prior to the effective date. As the claimant explained in her June, 2021, letter, in March, 2020, the state had yet to visit and release her home daycare as part of the process. Accordingly, the review examiner found that the claimant had only started the licensing process prior to the effective date. *See Consolidated Finding # 8.*

Inasmuch as the record shows that the claimant had not yet been approved to start her daycare business prior to the effective date, she has not met her burden to show the planned commencement of self-employment within the relevant period.

We, therefore, conclude as a matter of law that the claimant has not met her burden to substantiate employment or planned commencement of self-employment during the relevant period as required by the Continued Assistance Act, § 241.

³ *See* U.S. Department of Labor 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.

⁴ Although not explicitly incorporated into the review examiner’s findings, the claimant’s testimony in this regard and these documents are part of the unchallenged evidence introduced at the hearing and placed in the record and are 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).

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

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 18, 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

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.

JCT/rh