

The claimant provided documentary evidence that she had planned commencement of employment between January 1, 2019, and her claim effective date, thereby satisfying the Continued Assistance Act requirement to show a recent attachment to the labor force. She is therefore entitled to further PUA benefits.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: N6-H54M-TN7K

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 13, 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 February 1, 2022. 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 scheduled employment in 2020 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

¹Continued 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 29, 2020.
2. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week.
3. The claimant had no employment or earnings during the relevant period of January 1, 2019, through March 29, 2020.
4. In late February of 2020, the claimant saw a help-wanted sign posted in the window of a realty office, entered the office, and spoke with the daughter of the prospective employer.
5. A couple of days following the in-person meeting, the claimant had a telephone interview with the prospective employer and was extended an offer of employment as an administrative assistant with an anticipated start date of March 30, 2020.
6. The claimant accepted the offer of employment in late February 2020.
7. The claimant requested the prospective employer issue a letter confirming the offer of employment as she and her husband required it for their ongoing mortgage loan modification.
8. The prospective employer sent a letter dated March 4, 2020, to the claimant captioned "Letter of Intent to Hire."
9. The prospective employer telephoned the claimant several days before the anticipated start date and withdrew the offer of employment due to concerns with the impact of the COVID-19 pandemic upon his business.
10. The prospective employer sent the claimant an addendum to the March 4, 2020 letter on March 30, 2020 which confirmed the earlier telephone conversation and withdrew the offer of employment due to the COVID-19 pandemic.
11. On May 13, 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.
12. The claimant appealed the DUA's determination.

Credibility Assessment:

The prospective employer submitted an affidavit to the [Board of Review] dated February 27, 2022, which corroborates the claimant's testimony and which is found to be authentic and credible. Additionally, the prospective employer submitted a letter dated March 4, 2020, which corroborates the claimant's testimony and is found to be authentic and credible. Furthermore, the prospective employer submitted a letter dated March 30, 2020, which corroborates the claimant's testimony and is deemed to be authentic and 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 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 reverse the review examiner's legal conclusion that the claimant is ineligible for further 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 claim effective date.⁴ It is intended to show a recent attachment to the labor force and to prevent fraud.⁵

Proof of planned commencement of employment includes, but is not limited to: letters offering employment, statements or affidavits by individuals (with name and contact info) verifying an offer of employment.⁶ The claimant's effective date is March 29, 2020. Therefore, she must show proof of planned commencement of employment at some point between January 1, 2019, and March 29, 2020.

In support of her asserting that she had scheduled employment, the claimant produced a March 4, 2020, employment offer letter. *See Consolidated Finding # 8.* The review examiner further found that the employer had a telephone conversation with the claimant several days before the anticipated start date, in which he rescinded the employment offer. *See Consolidated Finding # 9.*

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, 4(b), p. 5, and Attachment I, C(2)(b), p. I-11.

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

⁶ *See* UIPL 16-20, Change 4, Attachment I, C(1), p. I-10.

Another letter from this employer, dated March 30, 2020, confirms this. *See Consolidated Finding # 10.*

This evidence thus satisfies the claimant's burden to show that she had scheduled employment that was rescinded within the time period between the start of the prior tax year and her effective date.

We, therefore, conclude as a matter of law that the claimant met the eligibility requirements to substantiate planned commencement of employment as required by the Continued Assistance Act, § 241.

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



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 29, 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.

BGM/rh