

The review examiner erred in concluding that the claimant needed to present a W-2 form or pay statement to meet her burden to substantiate employment under the Continued Assistance Act. An affordable housing application, which contained the name, address, and signature of the claimant's 2019 employer, her job title, rate of pay, and gross wages satisfied the claimant's burden. As nothing in the record or the review examiner's decision suggested this document was inaccurate or inauthentic, she is eligible for continued PUA benefits.

**Board of Review
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Issue ID: N6-H54M-VR2T

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 8, 2020, and was initially approved. However, in a determination issued on July 27, 2021, the DUA denied benefits as of 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 further PUA benefits in a decision rendered on March 10, 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 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's documentary evidence was insufficient to prove employment in 2019 because it was not a Form W-2 or pay statement, 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 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 filed for benefits using a Massachusetts address.
3. The claimant was not employed during 2019 and 2020.
4. The claimant did not have an offer of employment at the time of her claim.
5. On July 27, 2021, the Department of Unemployment Assistance (DUA) issued a Notice of Non-Monetary Issue Determination–Employment Substantiation to the claimant, stating that she was not eligible for PUA benefits.
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 except as follows. We reject the portion of Finding of Fact # 3, which states that the claimant was not employed in 2019, for reasons discussed below. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, we disagree with the review examiner’s legal conclusion that the claimant is ineligible 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 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 effective date of the individual’s claim for PUA benefits.³ There is no requirement that such documentation relate to work the claimant lost because of COVID-19, or that such work be located in any particular state.

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 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* 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.

Since the effective date of the claimant's PUA claim is March 8, 2020, she was required to present documentation to substantiate that she had employment, self-employment, or planned to commence such work at some point between January 1, 2019, and March 8, 2020. To meet this burden, the claimant presented an affordable housing application, which was entered into the record as Exhibit 4. Solely because her evidence was not a Form W-2 or pay stub, the review examiner concluded that the claimant had failed to meet her burden to substantiate employment.

The Continued Assistance Act does not specify the type of documentation necessary to substantiate employment.⁴ However, the U.S. Department of Labor (DOL) has advised state agencies:

“[D]ocumentation to substantiate employment of self-employment need only demonstrate the existence of employment or self-employment at some point between the start of the applicable tax year and the date of filing...proof of employment includes, *but is not limited to*, paycheck stubs, earnings and leave statements showing the employer's name and address, and W-2 forms when available.”⁵

(Emphasis added.) By use of the phrase “is not limited to,” the DOL has made clear that a claimant may produce documentation other than paycheck stubs, earnings and leave statements, or W-2 forms.

Thus, the review examiner erred during the hearing and in her decision, when she insisted that the claimant could not meet her burden without her 2019 form W-2 or a pay stub. Further, it appears that, in rendering her finding that the claimant was not employed during 2019, she failed to consider Exhibit 4. *See* Finding of Fact # 3.

The review examiner has an obligation to assess the credibility of evidence in rendering her findings of fact. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). “The test is whether the finding is supported by ‘substantial evidence.’” *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted). “Substantial evidence is ‘such evidence as a reasonable mind might accept as adequate to support a conclusion,’ taking ‘into account whatever in the record detracts from its weight.’” *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted). As nothing in her decision infers that Exhibit 4 lacked credibility, we assume that she did not incorporate it into her findings based simply on her mistaken belief that it was legally insufficient to meet the claimant's burden.

The claimant explained during the hearing that she no longer had her paystubs and could not find her W-2 form from 2019. She stated that she believed that Exhibit 4 contained all of the information necessary to substantiate her employment. We agree. Exhibit 4 is an affordable housing application, which contains the name, address, and signature of the claimant's 2019 employer. It includes her job title as a PCA (personal care assistant), her hourly rate of pay, and the gross wages paid over the period of her employment from March 2 through December 21, 2019. We further note that the employer signed the document over a pre-printed advisory, which

⁴ *See* the Continued Assistance Act, § 241(a)(2).

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

provides that any false statement subjects the individual to federal criminal penalties.⁶ In our view, there is nothing within the document or anywhere else in the record which suggests that this document is inaccurate or inauthentic. In short, it constitutes substantial evidence that the claimant was employed during 2019.

We, therefore, conclude as a matter of law that the claimant has met the requirement under the Continued Assistance Act to present documentation to substantiate that she had employment during the relevant period.

The review examiner's decision is reversed. The claimant is entitled to continue receiving PUA benefits as of the week beginning December 27, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 23, 2024



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.

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⁶ This portion of the claimant's testimony and the contents of Exhibit 4, while not explicitly incorporated into the review examiner's findings, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they 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).