

**The claimant failed to provide documentary evidence that she performed self-employment real estate services 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-H54N-0H53J**

### 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. On April 9, 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 November 12, 2021. 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.<sup>1</sup> 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 an employment document submitted with the claimant's appeal to the Board. 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 was ineligible for PUA benefits beginning January 2, 2021, because she failed to present documentation of work or the planned commencement of employment at a restaurant 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

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<sup>1</sup> Continued 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) with an effective date of March 8, 2020.
2. The claimant's weekly benefit amount was determined to be \$267.
3. At the time she filed for benefits, the claimant indicated that she earned no income in 2019.
4. The claimant has a Massachusetts real estate sales license dated September 3, 2019.
5. The claimant did not incur any business-related expenses in 2019.
6. On January 17, 2020, a payment was made on the claimant's behalf in the amount of \$686.50 for realtor dues.
7. The claimant did not incur any other business-related expenses between January 1, 2020, and March 8, 2020.
8. The claimant did not sell any properties or earn any business income between January 1, 2019, and March 8, 2020.
9. The claimant did not maintain a log or calendar of any business activities, including trips to open houses, course work, meetings with or calls to potential clients, or a record of car mileage.
10. The claimant did not earn any income from any source in 2019 and 2020.
11. The claimant did not file income tax returns for 2019 or 2020.
12. The claimant was born in 1998. Her parents listed her as a dependent on their 2019 and 2020 tax returns. The claimant's parents provided for all the claimant's expenses in 2019 and 2020.
13. The claimant has resided with her parents her entire life and her parents have provided for all her needs.
14. The claimant did not have the financial ability to support herself or the financial resources to expend monies for any business ventures between September 3, 2019, and March 8, 2020.

15. On August 18, 2021, the claimant received an IRS Treasury 310 Tax Refund in the amount of \$1,051.23. The specific tax year or the reason for which the refund was issued is unknown.
16. The claimant was not self-employed in the real estate business between January 1, 2019, and March 8, 2020.

Credibility Assessment:

The claimant testified that she was self-employed in the real estate business between September 5, 2019 and March 8, 2020. In support of her contention, she submitted her real estate license, documents showing alleged business expenses, a brokerage agreement, and a letter from the real estate company (“the letter”) where she allegedly worked as an independent contractor. One of the only two expenses listed during the relevant period is a January 17, 2020 payment for realtor dues in the amount of \$686.50. Having a real estate license and paying membership dues is not substantial evidence of engaging in the real estate business any more than having a law license and paying bar membership dues means that one is engaged in the practice of law. The only other expense during the relevant period (dated January 2, 2020) is an \$87 charge from a redacted and unidentifiable checking account, making it impossible to determine whom the charge belongs to. The claimant testified that she received a tax refund in 2021, possibly as a stimulus payment. She was not sure. Furthermore, the claimant’s purported signature in the submitted brokerage agreement is completely different than the signature contained within her driver’s license. Moreover, the letter, allegedly from the company’s owner, is not what one would expect coming from the owner of a professional real estate company. The letter is neither dated nor on company letterhead, lacks any contact information, and, although the claimant contended the letter was written by the company’s owner, the person signing it refers to herself as “manager.” The claimant also failed to mention the existence of such a letter during the initial hearing, and for the first time submitted it within her appeal to the Board of Review. In light of this, and particularly where it appears to have been prepared for the purpose of receiving benefits and not in the regular course of business, it is concluded the letter is not authentic.

Given the totality of the facts and circumstances described above, and also where the claimant did not file taxes, did not maintain logs or any type of business records, admittedly had no income, and could produce no credible document substantiating her assertions, it is concluded the claimant was not self-employed as a real estate agent between January 1, 2019 and March 8, 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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we affirm 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> It is intended to show a recent attachment to the labor force and to prevent fraud.<sup>5</sup>

Here, the claimant asserted that she had been self-employed between the prior tax year and the effective date. The claimant's effective date is March 8, 2020. Therefore, she must show proof of self-employment at some point between January 1, 2019, and March 8, 2020.

After remand and considering the additional document which the claimant submitted with her Board appeal, the review examiner found that the claimant had no earnings during, and did not work in, 2019 or before the effective date. *See Consolidated Findings ## 10 and 16.* The review examiner's rationale was essentially that the claimant's being licensed as a real estate agent and having paid the dues for that license were merely evidence of the claimant's potential ability to have worked as a self-employed agent, and this was not evidence that she performed such services. We agree.

The basis of the remand was the undated letter from the purported real estate brokerage manager produced with the Board appeal. The letter was not on letterhead and stated that the claimant was an independent contractor who was associated with the asserted real estate brokerage firm from September 5, 2019, through March, 2020 (when it closed), and that she had no earnings since the claimant was unable to obtain any clients. The review examiner stated in her remand credibility assessment that the letter produced with the claimant's Board appeal was not authentic.

A review examiner is not required to believe self-serving, unsupported, evidence, even if it is uncontroverted by other evidence. McDonald v. Dir. of Division of Employment Security, 396 Mass. 468, 470 (1986). "The review examiner bears '[t]he responsibility for determining the credibility and weight of [conflicting oral] testimony, . . .'" Hawkins v. Dir. of Division of Employment Security, 392 Mass. 305, 307 (1984), *quoting* Trustees of Deerfield Academy v. Dir.

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<sup>2</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>3</sup> *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), 4(b)(ii), p. 5.

<sup>4</sup> *See* UIPL 16-20, Change 4, Attachment I, C(1), p. I-4.

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

of Division of Employment Security, 382 Mass. 26, 3132 (1980). Unless the assessment is unreasonable in relation to the evidence presented, it will not be disturbed on appeal. 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 we have accepted this assessment as reasonable in relation to the evidence presented, this leaves the claimant without the necessary documentary evidence of self-employment within the required period.

We, therefore, conclude as a matter of law that the claimant has not met her burden to present substantial and credible documentary evidence substantiating employment, self-employment, or the planned commencement of either as required by the Continued Assistance Act, § 241.

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 - August 9, 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](http://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