

The claimant presented credible documentary evidence, including tax returns, invoices for supplies, and records of sales, verifying that she performed work in Massachusetts in 2019, the applicable tax year for her PUA claim. Therefore, she presented sufficient evidence to substantiate employment within the meaning of the Continued Assistance Act.

**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-H54N-M2K3

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 February 9, 2020, which was denied in a determination issued on June 7, 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 PUA benefits in a decision rendered on October 25, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant 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 did not meet her burden to substantiate employment or self-employment because she failed to provide any credible documentation showing she worked in Massachusetts in 2019 or 2020, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's 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 February 9, 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 has an active nursing license.

3. The claimant has no documentation showing that she performed services in 2019 or in 2020.
4. The claimant has no documentation showing she was offered employment in 2019 or in 2020.
5. On June 7, 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.

[Credibility Assessment:]¹

The claimant testified that she worked in 2019 and in 2020 as an aesthetics registered nurse. The claimant submitted a [sic] 2019 and 2020 tax returns, several checks from alleged clients, several receipts from the alleged supplier, and a letter from a doctor attesting that the claimant worked in 2019. The documents provided are not credible to show employment in 2019 because the tax returns are incomplete, are not signed, do not show the claimant's social security number, and contains different size font within the return. The checks do not state the purpose for the payments. The vendor's receipts are not all addressed to the claimant and are not all shipped to the claimant's address. The letter submitted by the doctor is not on a letterhead, it contains two dates in the header, it does not provide the doctor's address, and is not signed by the doctor. Although, the claimant provided a copy of her current nursing license in Massachusetts, the proof that she is current on her license is not credible proof that she worked in 2019 and 2020.

Therefore, the claimant failed to provide any reliable and credible documentations that she worked in 2019 or in 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 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 stating that the claimant had no documentation showing she worked in Massachusetts in 2019, as inconsistent with the evidence in the record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. Further, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to meet her burden to show that she worked in Massachusetts in 2019 or 2020.

¹ We have copied and pasted here the review examiner's credibility assessment, which appears in the Conclusions and Reasoning section of his decision.

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.² Pursuant to the Continued Assistance for Unemployed Workers Act (Continued Assistance Act), 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-employment³ at some point between the start of the applicable tax year and the date the claimant filed for benefits. *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. There is no requirement that such documentation relate to work the claimant lost because of COVID-19.

The claimant filed for PUA benefits effective February 9, 2020. Therefore, pursuant to the applicable provisions of the Continued Assistance Act, the claimant was required to substantiate employment, self-employment or planned commencement of employment or self-employment at some time between January 1, 2019, and February 9, 2020.

The claimant testified that she worked as an aesthetics registered nurse in 2019 and 2020. In support of her testimony, she provided her 2019 and 2020 tax returns, checks purporting to be payments from clients for services rendered in 2018 and 2019, a letter from the doctor with whom the claimant worked, and invoices for the purchase of medical supplies in 2018 and 2019. However, the review examiner rejected these documents as not credible for a variety of reasons. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they 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). Based upon the record before us, we cannot accept the review examiner's assessment.

The review examiner rejected the claimant's 2019 and 2020 tax returns as not credible on the grounds that they were incomplete, unsigned, and did not contain the claimant's social security number or signature. However, the documents in question, which were admitted into evidence as Exhibits 11 and 12,⁴ are completed federal and state tax returns electronically authorized by the claimant and her husband and signed by the third-party paid preparer.⁵ Additionally, a review of the tax documentation in both exhibits does not reveal any inconsistencies in the fonts used within each year's tax returns. It is further predictable, given the sensitive nature of such information,

² Pub. L. 116-136 (Mar. 27, 2020), § 2102.

³ Pub. L. 116-260 (Dec. 27, 2020), § 241.

⁴ The review examiner misspoke when admitting these documents into evidence at the hearing and inadvertently identified them as Exhibits 1 and 2. A review of the record confirms these documents should have been admitted sequentially into the record as Exhibits 11 and 12.

⁵ Exhibits 11 and 12 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).

that personal identifiable information such as a social security number will be redacted by default on reproductions of official government documents. We, therefore, reject as inconsistent with the record the portion of the review examiner's credibility assessment finding the claimant's 2019 and 2020 tax returns not credible.

The review examiner further rejected the checks as not credible because they did not explicitly state that they were payments to the claimant for services rendered and also found the invoices not credible because one was sent to another individual. While these documents, which were admitted into evidence as Exhibits 13 and 14,⁶ may be insufficient to substantiate self-employment if assessed individually, they have sufficient consistency and indicia of reliability to verify their authenticity when evaluated together.⁷ Moreover, these documents contain information corroborating the substance of the letter, admitted into evidence as Exhibit 7, which the review examiner rejected as not credible because it was not on letterhead, was not properly signed or dated, and did not have the doctor's address.⁸

The invoices submitted by the claimant bear substantial indicia of reliability, including dates, account numbers, statement numbers, a history of transactions, descriptions of the products sold, shipping information, and the logos and addresses of the medical supply companies with whom the claimant conducted business. Details contained in these invoices shows the claimant purchased medication and supplies consistent with her testimony that she worked as a registered nurse. Additionally, the one invoice not addressed to the claimant is addressed to the same doctor who drafted the letter explaining the nature of the claimant's employment, further corroborating the claimant's testimony about their business relationship.

While the checks do not specify that they were given as payment in exchange for services performed, they show that the claimant was receiving large payments from a variety of different individuals at varying times between 2018 and 2019, a pattern facially consistent with the operation of a business. When considered together with the claimant's testimony, tax returns, and professional licensure, the documents in Exhibits 7, 13, and 14 are sufficient to show that the review examiner's credibility assessment is inconsistent with the evidence of record. *See* Finding of Fact # 2.

The claimant presented credible evidence that she purchased medical supplies, received payment for services rendered, and filed federal and state tax returns verifying her performance of services. These documents, when taken together with the claimant's testimony, are sufficient to substantiate her employment during 2019, the applicable tax year.

We, therefore, conclude as a matter of law that the claimant met the eligibility requirement to substantiate employment or self-employment within the meaning of the Continued Assistance Act.

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.

⁶ The review examiner misspoke when admitting these documents into evidence at the hearing, and inadvertently identified Exhibit 13 as Exhibit 3, and inadvertently identified Exhibit 14 as Exhibit 11. A review of the record confirms these documents should have been admitted sequentially into the record as Exhibit 13 and Exhibit 14.

⁷ Exhibits 13 and 14 are also part of the unchallenged evidence introduced at the hearing and placed into the record.

⁸ Exhibit 7 is part of the unchallenged evidence introduced at the hearing and placed into the record as well.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 8, 2022



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.

LSW/rh