

Because the claimant was not able to present credible documented proof of her employment in the tax year prior to filing her PUA claim, she is not eligible for continued PUA benefits after December 27, 2020, pursuant to the Continued Assistance Act.

**Board of Review
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Issue ID: N6-H54P-FP2V

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 as of the week ending January 2, 2021. 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 May 3, 2020. In a determination issued on May 18, 2021, the DUA denied PUA 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 PUA benefits in a decision rendered on October 4, 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.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 tax documents submitted with the claimant's appeal to the Board, and to allow the claimant a further opportunity to submit employment documents. The claimant participated in 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 because she failed to present credible evidence of prior employment or the planned commencement of employment, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

¹ 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 PUA benefits, with an effective date of May 3, 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 no recent work history.
3. The claimant did not work in 2019, or in 2020.
4. The claimant has an account on Care.com., an online website that connects caregivers with families.
5. The claimant was not offered employment as a Personal Care Attendant (PCA) through Care.com in 2019 and/or in March, 2020.
6. The claimant is not a licensed or certified PCA. Care.com does not require a particular license or certification to obtain employment through its website.
7. On May 18, 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.

Credibility Assessment:

The claimant was asked to submit records to prove that she worked in 2019. The document she submitted is not credible because it is a part of one page of her 2019 federal tax return which does not show that the claimant received income for her work in 2019. The claimant failed to submit a 2019 1099-NEC form, or any type of work summary from Care.com, to show that she worked in 2019.

The claimant was asked to submit records to demonstrate that she was offered employment through Care.com in March, 2020, in particular, a screenshot to show communication with her employer pertaining to the job offer in March, 2020. The claimant failed to provide such documents, and her reasoning that "you do not take screenshots of the communication" was not persuasive, as it is highly unlikely there would be no record of any kind from the claimant's Care.com account if she was in fact offered employment. The claimant instead submitted a handwritten letter purporting to be from an individual that she was supposed to work for in March, 2020, but that letter is not credible or reliable. The letter indicates the claimant was interviewed and offered employment through Care.com. Again, the claimant has no records of any communication, texts, or emails from her Care.com account. The letter also does not contain a firm start date for the alleged position. Moreover, it is dated August 17, 2021, more than 16 months after the alleged job offer was made and the "notary" signature on the letter is dated August 16, 2021, one day prior to

the date of the letter. Generally, a notarized document containing a date is dated the same day as notarization or earlier. These inconsistencies detract from the authenticity of the letter.

Findings of fact about when the claimant opened her Care.com account could not be made based upon a review of the record. The claimant testified that she has had an account with Care.com since 2017 because she “believes she worked in 2018 through 2019 with Care.com.” The claimant submitted a screenshot of her account with Care.com dated November 7, 2019, and one part of a page from her 2019 tax return, however, these documents do not substantiate exactly when the claimant opened her Care.com account nor whether or not she was offered any work through it.

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. However, we note that the claimant submitted two one-page tax forms for the year 2019, and not one, as the review examiner stated in his credibility assessment.² Furthermore, the Care.com document submitted by the claimant does not appear to be an account screenshot, but rather a screenshot of an email Care.com sent to the claimant’s Yahoo email account on November 7, 2019. These inaccuracies are immaterial and do not detract from the reasonability of the credibility assessment.

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.³ In December, 2020, Congress added an additional requirement for individuals to continue receiving PUA benefits. Individuals who applied for PUA benefits before January 31, 2021, and who 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.⁴ It is intended to show a recent attachment to the labor force and to prevent fraud.⁵ 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 filing date.⁶

² The claimant’s Massachusetts tax return document, while not explicitly incorporated into the review examiner’s findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

³ Pub. L. 116-136 (Mar. 27, 2020), § 2102.

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

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

⁶ See UIPL 16-20, Change 4, Attachment I, C(2)(b), p. I-11.

Since the claimant filed her claim effective May 3, 2020, the applicable tax year is 2019. The claimant contended that she worked as a caretaker through Care.com in 2019, and that she was offered new employment through the same organization in March, 2020. However, she has not presented substantial and credible evidence to substantiate either employment.

In support of her contention that she worked in 2019 and was offered employment in 2020, the claimant submitted Remand Exhibits ## 5–9, which consist of two screenshots of an email from Care.com, a letter from the individual who allegedly offered her employment in March, 2020, half of one page from her 2019 federal tax return, and one page of her 2019 Massachusetts tax return, respectively. The review examiner concluded that these documents did not establish employment in 2019 or an offer of employment in 2020, as they either lacked indicia of reliability and/or did not contain the information the Board requested on remand, such as contemporaneous records from the claimant’s Care.com account showing that employment was offered to her in March, 2020. Such a credibility assessment is within the scope of the review examiner’s role, and, because it is reasonable in relation to the evidence presented, we will not disturb it on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996).

We, therefore, conclude as a matter of law that the claimant has not met the documentation requirement to substantiate her employment, as required under § 241 of the Continued Assistance Act.

The review examiner’s decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week ending January 2, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 11, 2022



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

SVL/rh