

The claimant failed to prove that he was paid for services or had a scheduled job offer and therefore has failed to provide substantial and credible evidence substantiating employment as required under the Continued Assistance Act. He is not entitled to PUA benefits after December 27, 2020.

**Board of Review
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Issue ID: N6-H54P-KPJ7

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 22, 2020. On May 18, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination-employment substantiation, informing him that he was not eligible to receive PUA benefits. 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 October 7, 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 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PUA benefits beginning the week ending January 2, 2021, because he failed to present documentation of a job offer which was revoked prior to the effective date of his claim, is supported by substantial and credible evidence and is free from error of law.

Consolidated 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 March 22, 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 had no 2019 or 2020 reported W-2, 1099, or cash employment earnings.
3. The claimant was not paid for any services in 2019 or 2020.
4. The claimant applied for numerous jobs in the spring of 2020 and in 2021 but did not receive a bona fide job offer.
5. The claimant tested positive for COVID-19 in February of 2021.
6. On May 19, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits beginning the week ending January 2, 2021.
7. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant and his attorney participated in the initial telephone hearing. At that hearing, the claimant testified that he did not work in 2019 because his wife was ill, but that he began to train as a delivery driver in December of 2019. The claimant testified that he became ill at the end of 2019 and the beginning of January 2020 and eventually tested positive for COVID-19. He testified that he contacted the potential employer regarding his illness and did not return to work. He testified that he didn't feel better until mid-April of 2020. The claimant also participated in the remand telephone hearing, but not represented by counsel. The claimant called the employer for whom he planned to work as his witness during his remand hearing.

During his initial hearing the claimant provided a COVID-19 test from a pharmacy dated February 1, 2020. The hearing officer questioned the authenticity of the document during the first hearing and the claimant was unable to explain how a pharmacy had provided him with test results for a test that was not yet available. The Board of Review remanded the case and requested the claimant submit medical documents to show his diagnosis, including a copy of his physician's records, his pharmacy chart, or any documents regarding the availability of COVID tests in Massachusetts in January of 2020. The Board also requested documents regarding the job training.

During the remand hearing, the claimant testified that he trained by shadowing employees at the potential employer in December of 2019 and was not paid for his training. The claimant testified that shortly thereafter, he felt very sick with memory, taste, and smell issues and called his doctor. He testified that on January 10, 2020 he called the employer to tell him that he was very sick and was afraid he had contracted COVID-19. The claimant testified that his wife reminded him that he actually tested positive for COVID-19 on March 1, 2020. The claimant testified that the pharmacy told him that they had incorrectly “stamped” his test results, but he could not provide any documents regarding this. The claimant’s testimony that the computerized test results would have been stamped incorrectly was not credible, and he could not provide any documents to support this assertion.

The claimant did not provide any additional documents at the remand hearing. The claimant testified that he had recently suffered numerous family deaths and was unable to gather documents, but that he attempted to access his pharmacy chart and obtain medical records from his physician. He further testified that he had various email and computer issues and that he was unable to gather these documents prior to the hearing. The claimant’s testimony that recent events had prevented him from obtaining documents was not credible because he was given additional time to upload documents from his doctor after his initial hearing in October of 2021. He did not upload any documents at that time either.

During the remand hearing, the claimant called the owner of the auto parts company, where he alleges he trained, as a witness. The witness, through an interpreter, testified that he remembered the claimant coming in for two or three days to do training in December. Although the witness could not remember clearly, he believed it was 2019 but admittedly could not remember if it was before or after the COVID-19 Pandemic began. The witness testified that he did not pay the claimant for his training but that he would have paid him when he returned and began his employment. The witness testified that the claimant did contact him to let him know that he had been ill and that he had tested positive for COVID-19. He further testified that as a result of the claimant’s illness, he did not begin working, and as such was not paid.

Both the witness and the claimant had similar testimony during the remand hearing regarding the training and offer of employment, but neither had any documents showing the training dates and times. The claimant did not produce any credible documents to support his testimony that the training was in December of 2019, that he became ill in January of 2020, that he tested positive for COVID-19 on February 1, 2020, or that the test was incorrectly stamped February 1, 2020 by the pharmacy. The claimant likewise did not produce the requested documents to show that his physician ordered a COVID-19 test in January of 2020 or that tests for COVID-19 were available on February 1, 2020. The witness could not be certain whether that was before or after the COVID-19 Pandemic began, but it is not credible that both the claimant and the witness would have known about COVID-19 in January of 2020. Because the claimant could not show he tested positive for COVID-19 in

February of 2020, and because the witness could not be certain of the year that the claimant trained with him, it is not credible that the claimant trained with the witness in December of 2019. It is more likely than not that the claimant trained in December 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 agree with the review examiner's legal conclusion that the claimant is ineligible for 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 before January 31, 2021, 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 It is intended to show a recent attachment to the labor force and to prevent fraud.⁴ 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.⁵

Proof of planned commencement of employment includes, but is not limited to: letters offering employment, and statements or affidavits by individuals (with name and contact information) verifying an offer of employment.⁶ Proof of employment includes, but is not limited to: paystubs, earnings and leave statements showing employer's name and address, and W-2 forms.⁷ The claimant's effective date is March 22, 2020. Therefore, he must show proof of such employment or planned commencement of such employment at some point between January 1, 2019, and March 22, 2020.

After remand and considering the additional documents which the claimant submitted with his Board appeal, the review examiner found that the claimant was not paid for any services in 2019 or 2020. *See Consolidated Finding # 3.* She also found that he did not have any job offers in 2020. *See Consolidated Finding # 4.* In light of these findings, the claimant has failed to demonstrate

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, Attachment I, C(2), p. I-10.

⁵ *See* UIPL 16-20, Change 4, Attachment I, C(1), p. I-4.

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

⁷ *See* UIPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

that he was employed, self-employed, or planned to commence employment or self-employment during the period January 1, 2019, to March 22, 2020.

We, therefore, conclude as a matter of law that the claimant has failed to provide substantial and credible documentary evidence substantiating employment, self-employment, or the planned commencement of employment or self-employment as required by the Continued Assistance Act, § 241.

The review examiner's decision is affirmed. The claimant is ineligible for PUA benefits beginning the week ending January 2, 2021, and for subsequent weeks, until he meets the requirements of the Continued Assistance Act.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 24, 2022



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.

BGM/rh