

PUA claimant's complete 2019 tax return, which is corroborated by agency records, is sufficient to satisfy the documentation requirement in order to substantiate employment during the claimant's benefit year.

**Board of Review
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Issue ID: N6-H54T-DR49

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 we reverse.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020, which was initially approved, but in a determination dated April 27, 2021, the DUA denied benefits beginning 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 1, 2021. 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 requirements to substantiate employment, self-employment, or 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 to consider additional evidence regarding the claimant's employment in 2019. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. 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 failed to substantiate employment, self-employment, or the planned commencement of employment 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

The review examiner's consolidated findings of fact and credibility assessment are set forth below in their entirety:

¹ Continued Assistance for Unemployed Workers Act of 2020, Division N, Title II, Subtitle A of the Consolidated Appropriations Act, 2021 (Dec. 27, 2020).

1. On May 18, 2020, the claimant filed a claim for Pandemic Unemployment Assistance (PUA) with an effective date of March 15, 2020.
2. The claimant's weekly benefit amount was determined to be \$267.
3. The claimant last worked full-time as the office manager for the employer, an auto-body shop from 2015 – January 2019.
4. The claimant was paid approximately \$17/hour by paper check which she deposited in her bank account.
5. The business closed in early 2019, and the claimant was laid off.
6. The claimant filed a 2019 tax return showing income of \$2,160 from the employer.
7. The claimant filed an unemployment claim in January 2019 and received benefits for the full 30 weeks allowed, through the end of August 2019.
8. The claimant has not returned to the work force.
9. The claimant did not have an offer to start employment that did not begin or was withdrawn due to COVID-19.
10. On April 28, 2021, the Department of Unemployment Assistance sent the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive PUA benefits beginning the week ending January 2, 2021.

Credibility Assessment:

The claimant provided testimony concerning her employment in 2019, which is corroborated by agency records of her wages and unemployment claim. However, the claimant failed to provide any documentation, other than her 2019 tax return, that corroborates 2019 employment as requested by the Board of Review. Further, as this review examiner indicated in the initial decision, the claimant testified in the initial hearing that she was offered a cashier position by the owner of a hydroponic growing business on 3/3/2020 but was informed by the owner that the job would no longer be available due to COVID-19. The documentation from the alleged employer, which appear to be letters, submitted to substantiate the offer of work and its withdrawal, lack credibility in light of the claimant's testimony. Specifically, the claimant asserted that she responded to a Help Wanted sign in a window by walking in and submitting an application, was contacted by phone by the owner with an offer which was then followed up with an email with a start date in two weeks. The claimant then stated that she did not hear from the owner again until he sent an email stating he could not hire her. She further stated that he did not call her or otherwise contact her after that. The claimant did not submit any

emails, instead submitting the aforementioned letters from the alleged employer. Further, when asked what her relationship was to the owner, the claimant described her relationship as “no relationship”. However, when it was noted that the Secretary of State Business Entity Summary notes for the alleged employer show the owner and the claimant have the same address, she then stated that he owns the house she lives in and that he used to live there. She claimed she did not know where her alleged landlord and employer resides now and testified that she delivers her rent check to the business. The claimant’s testimony was not credible as she denied any relationship with the alleged employer until faced with evidence of their relationship. Had the claimant been testifying honestly, she would have disclosed her relationship with him rather than claiming she had “no relationship” with him.

Further, in the remand hearing, the claimant testified that the employer from 2019 was actually the same person who she asserted offered her a job in 2020 that was allegedly rescinded due to COVID. The claimant has clearly had a long association with this person. Her failure to be honest about her relationship with him, which is clearly close, calls into question her overall credibility.

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 disagree with the review examiner’s legal conclusion that the claimant failed to meet the employment substantiation requirements under the Continued Assistance Act.

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 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-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

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

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 (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.

documentation relate to work the claimant lost because of COVID-19, or that such work be located in any particular state.

Since the effective date of her claim is March 15, 2020, the applicable tax year is 2019. The claimant has presented documents to substantiate two types of employment — a position as an office manager at an autobody shop (Company A) in January 2019, and an alleged offer to work at a hydroponic plant store (Company B) in March 2020 that was canceled due to the COVID-19 public health emergency. We need not consider whether the claimant received an offer to work at Company B that was revoked due to the COVID-19 public health emergency, as we believe the claimant has met her burden by showing her employment at Company A during the applicable tax year.

The findings provide that the claimant was employed as an office manager at Company A from 2015 until January 2019, when the shop closed, and the claimant was laid off. *See Consolidated Findings ## 3 and 5.* The claimant earned approximately \$2,160 at this job in 2019, as shown on her complete 2019 tax return that she provided to DUA. *See Consolidated Finding # 6; see also Remand Exhibit 5.* In her credibility assessment, the review examiner notes that the DUA’s own electronic record-keeping system (UI Online) corroborates her testimony regarding her employment and wages in January, 2019. We note further that UI Online shows that the claimant earned \$2,160 at Company A in the first quarter of 2019, which matches the amount of earnings reported in the claimant’s tax return.

While the review examiner writes in her credibility assessment that the claimant “failed to provide any documentation, *other than* her 2019 tax return,” (emphasis added) we believe that the claimant has provided sufficient documentation to show that she was employed in 2019. A completed tax return is not specifically identified under the list of acceptable documents provided under DOL regulations, however, the list is not exhaustive and allows for other types of documentation to substantiate employment.⁴ Although agency records are themselves not standalone proof of wages, here they are used to corroborate documentation that the claimant herself provided.⁵

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.

⁴ See UIPL 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(2)(a), pp. I-10 – I-11.

⁵ States may not rely solely on agency records to satisfy the employment substantiation requirement. The individual must submit documentation to the agency. *See* UIPL 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(2), p. I-10.

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.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 23, 2024



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.

RTG/rh