

**Review examiner unreasonably rejected the claimant's uploaded screenshots of evidence substantiating self-employment during the applicable tax year as not credible. He failed to allow for the technology which the claimant used to copy and upload records, parts of which appeared as part of two separate exhibits. Held claimant met the requirement under the Continued Assistance Act to continue to receive PUA benefits.**

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

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 beyond December 27, 2020. 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 23, 2020, which was initially approved, but in a determination issued on March 26, 2021, the DUA denied benefits after December 27, 2020. 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 beyond that date in a decision rendered on March 26, 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, 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 failed to present credible documentary evidence of employment, self-employment, or the planned commencement of such work, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed a claim for PUA benefits, with an effective date of February 23, 2020.
2. The claimant has not worked since 2016.

3. The claimant was not offered employment in 2019 or 2020.
4. The claimant has no credible documentation showing that he performed services in Massachusetts in 2019 or 2020.
5. The claimant has no documentation showing he was offered employment in Massachusetts in 2019 or 2020.
6. On March 26, 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.

### 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 Findings of Fact ## 2–5, as explained below. We also disagree with the review examiner's legal conclusion that the claimant did not 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.<sup>1</sup> Pursuant to the Continued Assistance for Unemployed Workers Act (Continued Assistance Act),<sup>2</sup> 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.<sup>3</sup> There is no requirement that such 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 the claimant's PUA claim is February 23, 2020, he was required to present documentation to substantiate that he had employment, self-employment, or planned to commence employment at some point between January 1, 2019, and February 23, 2020. As noted in the review examiner's decision, the claimant asserted that he had been working as a driver for

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>2</sup> Pub. L. 116-260 (Dec. 27, 2020), § 241.

<sup>3</sup> 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.

a food delivery company (Company A) in 2019 until February, 2020, and that he had been offered a job that was to begin in April, 2020. We decline to consider the evidence of the offered job, because, even if proven, it does not fall within the applicable time period.

The question before us is whether the claimant has met his burden to show that he was self-employed with Company A at some point between January 1, 2019, and February 23, 2020. We believe that he has.

Findings of Fact ## 2–5, wherein the review examiner found that the claimant had not worked since 2016, are based upon his assessment that the documents which the claimant offered to substantiate that he had performed services delivering food for Company A were not credible. 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 these findings.

Specifically referring to the food delivery services, the review examiner’s decision states, “the claimant had no paystubs, 1099’s or tax records to substantiate his employment. The bank statements are also not credible as they have different fonts and font sizes, appear to have been created by copying and pasting several documents together, and do not contain the claimant’s name on any page with any wage information.” His assessment fails to acknowledge that the claimant explained during the hearing that he was not issued paystubs or a 1099 from Company A, and we note that the review examiner never asked the claimant for any tax returns.<sup>4</sup> Rather, the claimant offered as evidence photographs or screenshots, which he took with his mobile phone, of emails from Company A and from a closed bank account showing direct deposits from Company A in 2019.

We would agree that, by uploading individual screenshots, no single uploaded document, by itself, was such evidence as a reasonable mind might accept as adequate to support a conclusion. But, if the review examiner had looked at the separated documents together and in combination with other documents, they do support the claimant’s testimony that he was performing services for Company A in 2019.

For example, Exhibit 15, is an email to the claimant from Company A, dated January 21, 2019, with wage information. It is a screen shot of a page that states, “Sign in to your [Company A] account” and shows earnings of \$1,748.65 for 180 trips in the period January 4 through 18, 2019.<sup>5</sup>

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<sup>4</sup> While not explicitly incorporated into the review examiner’s findings, this portion of the claimant’s testimony 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).

<sup>5</sup> Exhibit 15, as well as Exhibits 22, 28, and 31 discussed below, are also part of the unchallenged evidence in the record.

Two other separately uploaded documents include two screen shots of an online bank statement which show direct deposits from Company A on January 18, 2019, February 1, 2019, and February 15, 2019.<sup>6</sup> We can tell that these screenshots are of a single bank statement, because Exhibit 31 shows the [Bank A] logo, identifies the claimant by name and address as the person logging in to a “Premier Checking – 4183” account, and, in red font it shows the figure \$156.67. Exhibit 28 appears to be a screen shot image of what appears on the bank statement below that, as the top of the document shows the same “Premier Checking – 4183” account, again in red font appears the figure \$156.67, but below that lists deposits from January 2 through February 2, 2019, and includes printed entries “Direct Deposit [Company A] Payroll” on January 18, February 1, and February 15, 2019. Indeed, this evidence is a statement from a website copied and pasted onto his cell phone, then forwarded to the DUA for the hearing. Where the DUA encourages claimants to upload documents for the hearing and the claimant did so using screenshots on his phone, it is unreasonable to penalize him for uploading a long webpage statement as two separate screenshots and not having his name on both. We also believe it is unreasonable to penalize the claimant for the various font colors and sizes used in the bank’s original statement.

Additionally, the claimant presented a screenshot of an email from January 4, 2019, confirming that an occupational accident insurance policy for a transportation provider from [Company B] was issued to him with an effective date of January 7, 2019.<sup>7</sup> Proof of accident insurance as a transportation provider is consistent with his testimony and the other documentary evidence that the claimant performed paid delivery services in 2019.

In short, we believe that when taking into account the technology used to submit evidence, that continued exhibits viewed together contain identifying and detailed information of payment for services in 2019, and, considering that the information is corroborated by other documents, we believe the claimant has met his burden to present substantial and credible evidence to substantiate employment.

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

The review examiner’s decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning December 27, 2020, and for subsequent weeks if otherwise eligible.<sup>8</sup>

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 8, 2022**



Paul T. Fitzgerald, Esq.  
Chairman



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<sup>6</sup> See Exhibits 28 and 31.

<sup>7</sup> See Exhibit 22.

<sup>8</sup> There is another appeal pending before the Board on a separate issue, Issue ID # N6-HDT5-2D65. Consequently, the Board’s decision today will not trigger a payment of benefits.

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.

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