

The claimant failed to provide documentary evidence that he was self-employed between January 1, 2019, and the effective date of his PUA claim, thereby not satisfying the Continued Assistance Act requirement to show a recent attachment to the labor force. He is therefore not entitled to further PUA benefits.

**Board of Review
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Issue ID: N6-H552-6PP2

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 1, 2020. On May 12, 2021, the DUA sent the claimant a determination informing him that he was not eligible to receive PUA benefits as of 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 in a decision rendered on January 12, 2022. 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 her 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 January 2, 2021, because he failed to present documentation of work 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 Pandemic Unemployment Assistance (PUA) benefits, with an effective date of March 1, 2020.
2. The Department of Unemployment Assistance (DUA) determined that the claimant has a weekly benefit amount of \$587.00.
3. The claimant's initial PUA claim indicates that the claimant was self-employed, an independent contractor or a gig worker, and that COVID-19 has severely limited his ability to perform his normal work.
4. The claimant was residing in a [sic] Massachusetts when he applied for PUA benefits, and was not self-employed, an independent contractor or gig worker.
5. The claimant did not work in 2019 or 2020.
6. The DUA issued a disqualifying determination to the claimant on January 12, 2022.
7. The claimant appealed the determination.

Credibility Assessment:

Consideration was given to the claimant's contention that he was an advertising marketing consultant, who was an independent contractor within the years of 2019 and 2020. The claimant offered letters from clients and 1099's in support of his assertion that he was employed during the years of 2019 and 2020. During the years in question, the claimant testified he was an advertisement consultant for numerous automotive dealerships. The claimant testified he worked approximately forty hours per week in 2019. He was unable to provide an estimate of the hours per week worked in 2020, due to the COVID-19 emergency. The claimant further testified he did not have a set rate of pay. Within his testimony the claimant explained his compensation depended upon the frequency and types of services he provided. His services included but [sic] not limited to development of radio, television, and newspaper advertisements for dealerships.

When presented the opportunity to produce his complete 2019 and 2020 [sic], the claimant indicated that the missing tax documents pertained to his wife's financial information. The claimant believed that the requested tax documentation was not needed to determine his case. In addition, the claimant was requested to present records of payment received from work performed in 2020, which he was unable to provide. The claimant's inability to produce his complete tax returns and records of payments received from his clients results in the claimant's testimony being determined not credible.

Consideration was given to the claimant's testimony that he received communication from his clients requesting to temporarily discontinue services due to the COVID-19 emergency. When presented the opportunity to produce emails or other written communication confirming these requests, the claimant was unable to provide such documentation. The claimant testified that all of his clients' requests were verbal, and no written communication was available.

Consideration was given to the claimant's testimony that he received reimbursements from clients, and incurred expenses from his performance of service. When presented the opportunity to produce invoices confirming these reimbursements and expenses, the claimant was unable to provide such documentation. As the claimant offered evasive testimony and all of the documents that the claimant presented appeared to have been generated for the purpose of collecting PUA benefits, the claimant's testimony and evidence as a whole is not credible.

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 affirm 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 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 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 or effective date.⁴ It is intended to show a recent attachment to the labor force and to prevent fraud.⁵

Here, the claimant asserted that he had been self-employed. Proof of self-employment includes, but is not limited to, state or federal employer identification numbers, business licenses, tax

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 UIP 16-20, Change 4, Attachment I, C(1), p. I-4.

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

returns, business receipts, and signed affidavits from persons verifying the individual's self-employment.⁶ The claimant's effective date is March 1, 2020. Therefore, he must show proof of self-employment or planned commencement of self-employment at some point between January 1, 2019, and March 1, 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 self-employed and did not work in either 2019 or 2020. *See Consolidated Findings ## 4 and 5.*

In her credibility assessment, she made clear her concerns regarding the claimant's lack of documented contemporaneous communications with his claimed clients, failure to produce complete copies of 2019 and 2020 tax returns, and lack of documents evidencing payment for work within the period between January 1, 2019, and March 1, 2020 (claimant's effective date). We recognize that neither the authenticity nor the credibility of the 2020 Form 1099 is questioned by the review examiner.

While the documents produced (a 2020 Form 1099 and a Social Security statement) evidence 2020 earnings, these fail to prove they were resulted from work performed within the requisite time period. The review examiner's credibility assessment makes clear that she provided the claimant the opportunity to provide the documentation proving that he performed these services during the time which would satisfy employment substantiation, but he failed to do so. This left the claimant without the necessary evidence proving work before his effective date.

We, therefore, conclude as a matter of law that the claimant has not provided substantial and credible documentary evidence substantiating 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.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 20, 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**

⁶ See UIPL 16-20, Change 4, Attachment I, C(1), p. I-10.

(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