

Where the claimant has produced documents substantiating the planned commencement of employment between 2019 and her 2020 claim effective date, she is entitled to continue receiving PUA benefits after December 27, 2020.

**Board of Review
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Issue ID: N6-H553-3LF3

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 22, 2020, which was originally approved, and then in a determination issued on May 18, 2021, the claimant was disqualified beginning December 27, 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 July 29, 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claimant was ineligible for PUA benefits because she failed to present documentation of a Massachusetts job offer which was revoked prior to the effective date of her claim, is supported by substantial and credible evidence and is free from error of law.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

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) with an effective date of March 22, 2020.
2. The claimant filed a claim for PUA benefits, with an effective date of March 22, 2020.
3. The claimant has no recent work history.
4. The claimant has not worked since 2017.
5. In early-2020, the claimant started working with the Massachusetts Rehabilitation Commission to look for work. She met with a vocational counselor.
6. The claimant was offered a bookkeeping/receptionist position at an auto-body shop in February 2020.
7. The claimant was hired to begin work on March 16th, 2020. However, the auto-body shop was unable to employ the claimant due to reasons related to the pandemic.
8. 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.
9. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant provided credible testimony throughout the remand hearing which was supported by corroborating documentation. The claimant provided a letter from the employer indicating her start date and the inability of the shop to employ her due to the pandemic. The claimant also submitted a letter from the Massachusetts Rehabilitation Commission stating that in February 2020, the claimant informed them that she was offered a bookkeeping position. The documentation was accepted as credible and findings of fact were made in accordance with the information contained therein.

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 her burden to continue receiving 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 filing date.⁵

The claimant attempted to meet this burden with documentation to substantiate the planned commencement of employment. Documents proving the planned commencement of employment include, but are not limited to, letters offering employment, and statements or affidavits by individuals (with name and contact information) verifying an offer of employment.⁶ Because the claimant filed her claim, effective March 22, 2020, the applicable tax year is 2019. *See* Consolidated Finding # 1. Therefore, she must present documentation of the planned commencement of employment between January 1, 2019, and March 22, 2020.

Based upon additional documentation provided with the claimant's appeal to the Board, we remanded this case to the review examiner to consider the additional evidence. The consolidated findings now reflect that additional evidence. They provide that, in early-2020, the claimant started working with a vocational counselor from the Massachusetts Rehabilitation Commission to look for work. *See* Consolidated Finding # 5. They also provide that a job was offered to her in mid-February, 2020, and was to have started on March 16, 2020. *See* Consolidated Findings ## 6 and 7. Unfortunately, the job offer was revoked due to reasons related to the pandemic. *See* Consolidated Finding # 7. In light of this additional evidence and revised findings, we are satisfied that the claimant has met her burden to show planned commencement of employment during the relevant period.

We, therefore, conclude as a matter of law that the claimant has met the documentation requirement to substantiate her employment, as required under § 241 of the Continued Assistance Act.

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(2)(b), p. I-11.

⁶ *See* UIPL 16-20, Change 4, Attachment I, C(2)(a), pp. I-10 – I-11.

The review examiner's decision is reversed. The claimant is entitled to continue receiving PUA benefits for the week beginning December 27, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 5, 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