

The claimant provided documentary evidence of her alleged self-employment as a house cleaner in the form of client letters and paper invoices. However, absent corroborating evidence showing this earned income, such as in tax documents or bank statements, the review examiner properly rejected this evidence as not credible. Having failed to substantiate her self-employment as required by the Continued Assistance Act, the claimant was not entitled to further PUA benefits.

**Board of Review
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Issue ID: N6-H555-MDR8

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 8, 2020, which was initially approved. However, in a determination issued on May 12, 2021, the DUA determined that the claimant was not eligible to receive PUA benefits as of the week ending January 2, 2021, and thereafter. 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 January 13, 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 subsidiary findings to consider the credibility of the documents that the claimant produced to support her testimony. 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 failed to provide credible evidence of her self-employment as a housecleaner, 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) which was determined to be effective March 8, 2020.
2. The Department of Unemployment Assistance ("DUA") determined the claimant's weekly benefit amount to be \$267.
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 her ability to perform her normal work.
4. The claimant was residing in a [sic] Massachusetts when she applied for PUA benefits, and was not self-employed, an independent contractor or gig worker.
5. The claimant did not file a tax return in 2019.
6. In 2020, the claimant received \$24,264 in PUA benefits.
7. The claimant was issued a 2020 1099-G detailing she received \$24,264 in unemployment benefits.
8. The claimant was neither employed nor self-employed in 2019 or 2020.
9. The DUA issued a disqualifying determination to the claimant on May 12, 2021.
10. The claimant appealed the determination.

Credibility Assessment:

The claimant offered a partial 2020 tax return and letters from clients of her assertion that she was employed during the years of 2019 and 2020. During the years in question, the claimant testified she was a self-employed house cleaner.

Consideration was given to the claimant's testimony and evidence presented of signed statements from clients. However, such statements are not substantial and credible evidence of someone's self-employment. Documentation such as business receipts/1099 [sic], tax returns, and bank statements are needed to show that income was received from her self-employment. Signed letters alone would not be credible to prove self-employment. In that regard, anyone could present typed signed letters stating that they were employed. However, it would be difficult for one to falsify a complete and submitted tax return (federal and state), reporting income from self-employment in addition to bank statements, 1099's, *etc.*

Consideration was given to the claimant's partial 2020 tax return. The return does not indicate that she received income from her self-employment. Within the "Other Income" section it states the claimant received \$24,264, which was from unemployment benefits. Furthermore, within the "Total Income" section the same amount of \$24,264 is shown. Based upon the information presented, the only income that the claimant received in 2020 was from unemployment benefits.

Consideration was given to the claimant's picture of numerous paper invoices from the years of 2019 and 2020. These paper invoices are not substantial and credible evidence of one's self-employment. Again, anyone could write paper invoices and claim they represent actual work done. Moreover, given that the only income shown within the 2020 tax return was from unemployment benefits, and the claimant [sic] lacking a 2019 return, the paper invoices are not credited.

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. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant failed to provide substantial and credible evidence showing that she was self-employed in 2019 and 2020.

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 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 self-employment includes, but is not limited to, state or federal employer identification numbers, business licenses, tax returns, business receipts, and signed affidavits from persons verifying the individual's self-employment.⁶ Since the claimant's effective date is March 8, 2020,

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-10.

she had the burden to show documentary proof of work or planned commencement of work between January 1, 2019, and March 8, 2020.⁷

Upon remand, the review examiner considered the evidence presented by the claimant and in her credibility assessment, she did not find the claimant's documentary evidence and testimony to be 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).

As stated above, the U.S. Department of Labor allows claimants to meet their burden by presenting documents other than business receipts, forms 1099, tax returns, and bank statements noted in the credibility assessment. However, we agree with the review examiner's assessment that the claimant's documentary evidence is not credible by itself. The claimant provided undated letters from alleged clients, not affidavits signed under the penalties of perjury. The authenticity of the photographed paper invoices is also questionable, absent additional documents such as tax returns showing this earned income, bank statements showing deposits, or other proof of earnings. The claimant did not file taxes for 2019. *See Consolidated Fact # 5*. And, although the claimant provided a 2020 tax return, the only income shown was from unemployment benefits, which is contrary to the claimant's testimony that she worked in 2020. For these reasons, we believe that the review examiner's assessment is reasonable in relation to the evidence presented.

Having rejected the documentary evidence presented as not credible, the claimant has not met her burden to prove that she was self-employed in 2019 or 2020.

We, therefore, conclude as a matter of law that the claimant has failed to substantiate any employment or self-employment as required by the Continued Assistance Act, § 241.

The review examiner's decision is affirmed. The claimant is not eligible for PUA benefits beginning the week ending January 2, 2021, and thereafter.

⁷ 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. In effect, the claimant must show a connection to the labor force before he or she became unemployed. *See* UIPL 16-20, Change 4, Attachment I, C(2)(b), p. I-11.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 21, 2024



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
(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.

TF/rh