

The claimant last worked in 2018, and his November 6, 2020, offer of employment was outside the relevant period. Therefore, he has failed to substantiate employment, self-employment, or the planned commencement of employment, as required under the Continued Assistance Act, and he is not eligible for PUA benefits after December 27, 2020.

**Board of Review
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**Paul T. Fitzgerald, Esq.
Chairman
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Member
Michael J. Albano
Member**

Issue ID: N6-H556-6LDT

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 the claimant Pandemic Unemployment Assistance (PUA) benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant had filed a claim for PUA benefits, which was initially approved. But in a subsequent determination issued by the agency on June 18, 2021, the claimant was disqualified for benefits beginning December 27, 2020. The claimant appealed 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 October 4, 2021. The claimant sought review by the Board, which affirmed the review examiner's decision, and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On September 6, 2022, the District Court ordered the Board to make subsidiary findings from the record. Consistent with this order, we remanded the case to the review examiner to make subsidiary findings of fact from the record concerning the claimant's credibility. Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not meet his burden to substantiate employment or self-employment because he failed to provide any documentation showing he worked or was going to be working in Massachusetts in 2019 or 2020, is supported by substantial and credible evidence and is free from error of law.

After reviewing the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we affirm the review examiner's decision.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant filed a claim for PUA benefits, with an effective date of April 5, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. The claimant did not work in either 2019 or 2020. He last worked in 2018.
3. In 2020, the claimant did not have a job offer for work to begin on or before April 5, 2020.
4. On November 6, 2020, the claimant was interviewed for a position at a logistics company.
5. On November 6, 2020, after the interview, the claimant was offered a second shift warehouse position by the logistics company.
6. The logistics company emailed a job offer to the claimant on November 6, 2020. The offer stated that the next step in the onboarding process would require the claimant to authorize a background check and a drug screen within 24 hours.
7. The claimant was scheduled to start the job on November 18, 2020.
8. Due to unknown reasons, the claimant did not start work for the logistics company.
9. On December 5, 2020, the claimant's mother tested positive for COVID-19.
10. On June 18, 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.
11. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant admittedly last worked in 2018 and did not have an offer of work prior to the effective date of his claim. The claimant's testimony that he failed to start work due to COVID-19 was uncorroborated. The claimant alleged that his mother and his fiancée tested positive for COVID-19 shortly after his job interview with the logistics company. The claimant stated that because he was exposed to both his mother and his fiancée, he was afraid that he too had COVID-19, and that he was already experiencing some COVID-19 symptoms. The claimant alleged that he notified the logistics company that he had COVID-19 symptoms, and that the company advised him not to report to work, and subsequently pulled his job offer altogether. The claimant provided no documentation evidencing his conversations with the company about the COVID-19 symptoms or a job offer withdrawal. In addition, the documents provided by the claimant show that the claimant was interviewed and offered a warehouse position by the logistics company on

November 6, 2020. The claimant testified that he was scheduled to start this job on November 18, 2020. Medical records submitted by the claimant show that the claimant's mother tested positive for COVID-19 on December 5, 2020. Because the mother's COVID-19 diagnosis was a month after the claimant had received a job offer, and weeks after he had been scheduled to start work, it is not credible that this diagnosis was the reason why the claimant could not start work at the logistics company. Therefore, it is concluded that the claimant's reasons for not starting work at the logistics company on November 18, 2020, are unknown.

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 agree with the review examiner's legal conclusion that the claimant failed to substantiate employment or self-employment during the relevant period, and therefore is not entitled to further PUA benefits.

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.¹ Pursuant to the Continued Assistance for Unemployed Workers Act (Continued Assistance Act),² any claimant who files a new application for PUA benefits on or after January 31, 2021, or any claimant who receives 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 date the claimant filed for benefits.³ There is no requirement that such documentation relate to work the claimant lost because of COVID-19.

The claimant filed for PUA benefits effective April 5, 2020. Therefore, pursuant to the applicable provisions of the Continued Assistance Act, the claimant was required to substantiate employment, self-employment or planned commencement of employment or self-employment at some time between January 1, 2019, and April 5, 2020 (relevant period).⁴

¹ Pub. L. 116-136 (Mar. 27, 2020), § 2102.

² Pub. L. 116-260 (Dec. 27, 2020), § 241.

³ 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.

⁴ 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 UIPL 16-20, Change 4, Attachment I, C(2)(b), p. I-11.

Here, the review examiner found that the claimant had not worked since 2018, and that the offer of employment from the logistics company, dated November 6, 2020, was outside of the relevant period.⁵ See Consolidated Findings ## 2 and 5. Since the claimant failed to provide documentation showing that he was either employed or offered employment during the relevant period, he is not eligible for PUA benefits on or after December 27, 2020.

We, therefore, conclude as a matter of law that the claimant did not meet the eligibility requirement to substantiate employment, self-employment or the planned commencement of employment or self-employment within the meaning of the Continued Assistance Act.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning December 27, 2020, and indefinitely thereafter.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 24, 2023



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.

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⁵ As the issue before this Board is one of employment substantiation, we will not address whether the claimant's offer was rescinded due to one of the qualifying COVID-19 circumstances listed under the CARES Act, §2102(a)(3)(A)(ii)(I)(aa)-(kk).