

The claimant presented documentary evidence verifying that he performed work in 2019 and into 2020. Therefore, he met his burden to substantiate employment within the meaning of the Continued Assistance Act, and he remained eligible for PUA benefits.

**Board of Review
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Issue ID: N6-H557-3394

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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective April 19, 2020, which was initially approved. However, in a determination issued on July 6, 2021, the DUA denied further benefits beginning 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 determination and denied PUA benefits in a decision rendered on November 8, 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 further 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 did not meet his burden to substantiate employment or self-employment because he failed to establish that he worked or was going to be working in Massachusetts in 2019 or before April 19, 2020, 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 April 19, 2020.
2. The claimant filed the PUA claim using a Massachusetts address.

3. Prior to filing his PUA claim, the claimant was a student at a Massachusetts high school. He graduated from high school in June 2021.
4. In 2019 and 2020 the claimant occasionally worked at short term part-time jobs. He would voluntarily quit the jobs to participate in school athletic programs.
5. The claimant submitted paystubs from his part-time work between sports seasons.
6. In the fall of 2021, the claimant was a full-time student at a Massachusetts university.
7. The claimant did not make himself available for work while he was participating in school sports seasons.
8. The claimant did not submit any tax documents such as W2 wage statements or annual tax returns.
9. The claimant did not conduct a diligent job search.
10. On July 6, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits.
11. 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. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to meet his burden to continue receiving 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

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.

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 19, 2020. Therefore, 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 19, 2020.⁴

In his decision, the review examiner refers to the claimant's testimony that he had voluntarily quit his jobs to participate in athletic programs. The review examiner concludes that, because the claimant had voluntarily left his work to participate in athletics, and because he was unavailable to work while participating in such programs, he had not established employment substantiation as defined by the DOL and required under the Continued Assistance Act. This was an error. The claimant's reason for separating from employment and his subsequent availability for work are not before us. He must simply document that he had such employment during the relevant period.

Here, the claimant testified that he worked at an online retailer and at a pharmacy in 2019. He presented a paystub showing his work at a pharmacy in 2019. *See* Exhibit 6.⁵ This evidence is reflected in Findings of Fact ## 4 and 5.⁶ This is sufficient to satisfy his burden to substantiate employment in 2019.

We, therefore, conclude as a matter of law that the claimant met the eligibility requirement to substantiate employment or self-employment within the meaning of 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.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 21, 2022



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. 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.

⁵ While not explicitly incorporated into the review examiner's findings, this part of the claimant's testimony and Exhibit 6 are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

⁶ We also note that the DUA's electronic record-keeping system, UI Online, shows wages reported with such employers in 2019 and even into the first quarter of 2020.

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.

MS/rh