

Documentary evidence shows that the claimant had an offer of employment that she planned to commence in August of 2020. The claimant met her burden to substantiate her planned commencement of employment within the meaning of the Continued Assistance Act, and she is eligible for continued PUA benefits.

**Board of Review
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Michael J. Albano
Member**

Issue ID: N6-H557-RF3J

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 August 23, 2020, which was initially approved. However, in a determination issued on July 6, 2021, she was disqualified from receiving any PUA benefits beginning 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 and denied PUA benefits in a decision rendered on March 14, 2022. 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 PUA benefits. 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 to make subsidiary findings from the record regarding the claimant's offer of employment. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. 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 present credible documentary evidence of planned commencement of employment, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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 August 23, 2020.

2. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week.
3. The claimant had no employment or earnings during the relevant period of January 1, 2019, through August 23, 2020.
4. The claimant planned to resume employment when her youngest child enrolled in kindergarten. The child began kindergarten during the week of August 24, 2020.
5. The claimant had a telephone conversation with a prospective employer in early June of 2020 which resulted in an offer of employment as a full-time office assistant commencing the week of August 24, 2020.
6. The claimant was unable to commence employment during the week of August 24, 2020, because she had to assist and monitor her minor children with school, which was fully remote in late August of 2020 due to the COVID-19 pandemic.
7. The prospective employer confirmed the offer of employment by correspondence dated June 1, 2021, and January 19, 2022.
8. On July 6, 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 offered credible testimony in which she candidly explained her plan to resume employment when her youngest child was enrolled in kindergarten beginning the week of August 24, 2020. The claimant's explanation was corroborated by the [two] letters of the prospective employer. The letter dated January 19, 2022, is found to be credible because the information set forth in the letter is consistent with the testimony of the claimant. The claimant's testimony that she could not begin the work because of her children's schooling was reasonable given that school was fully remote at that time. It is plausible and believable that the claimant's youngest child, beginning kindergarten, would require assistance and monitoring in a remote setting.

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 did not provide substantial and credible evidence to substantiate her planned commencement of employment.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under § 2102 of the CARES Act of 2020 and administered by the U.S. Secretary of Labor.¹ In December, 2020, Congress added an additional requirement for individuals to continue receiving PUA benefits. Pursuant to the Continued Assistance for Unemployed Workers Act (Continued Assistance Act), 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.² 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.³ It is intended to show a recent attachment to the labor force and to prevent fraud.⁴

Here, although the claimant had no employment or earnings during the relevant period, she was offered a position as an office assistant for an electrical contractor in June of 2020. *See* Consolidated Findings ## 3 and 5. The claimant was scheduled to commence work beginning the week of August 24, 2020. Consolidated Finding # 5. The review examiner found that she had to withdraw from the offered position when her children had to resume remote learning beginning the fall of 2020. *See* Consolidated Finding # 6.

At the original hearing, the claimant testified that she did not discuss her work schedule, rate of pay, or whether she would be an employee or an independent contractor. In his decision, the review examiner found that, absent such critical details, it was not reasonable to characterize the June, 2020, job offer as a formal contract of hire and instead characterized it as an agreement to further discuss the potential for employment or provision of services. However, in his decision, the review examiner failed to consider the credibility of a letter, dated January 19, 2022, submitted by the claimant from her alleged employer. Exhibit # 8. The letter states that the claimant received a job offer to commence employment in August of 2020 and corroborates that the claimant did not begin work due to her having to tend to her children who were attending school remotely. The letter also provides that the claimant was to work full-time hours at \$30 per hour.⁵

On remand, the review examiner assessed the credibility of the January 19 letter, along with the claimant's testimony, and determined that the claimant's testimony and the letter were credible. In light of the consolidated findings and this letter, the claimant has satisfied her burden to present

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

² Pub. L. 116-260 (Dec. 27, 2020), § 241; *see* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), 4(b)(ii), p. 5.

³ *See* UIPL 16-20, Change 4, Attachment I, C(1), p. I-4.

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

⁵ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

substantial and credible documentary evidence of planned commencement of employment during the relevant time period.

We, therefore, conclude as a matter of law that the claimant met the requirement to substantiate her planned commencement of employment as required by the Continued Assistance Act.

The review examiner's decision is reversed. The claimant is entitled to continue receiving PUA benefits as the week ending January 2, 2021, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 22, 2023



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.

TCF/th