

The claimant was unable to provide contemporaneous documentary evidence verifying that she worked as a nanny in 2019. Therefore, the review examiner reasonably concluded that the claimant did not present sufficient evidence to substantiate employment within the meaning of the Continued Assistance Act.

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

Issue ID: N6-H558-N3PJ

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 15, 2020, which was initially approved, but in a determination issued on June 7, 2021, she was disqualified as of 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 November 15, 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. 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 obtain additional information about the claimant's employment status in 2019. 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 did not meet her burden to substantiate employment or self-employment because she failed to provide any documentation showing she 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.

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 PUA benefits, with an effective date of March 15, 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 file a 2019 tax return until after the hearing on October 12, 2021. The claimant filed a 2019 Massachusetts tax return on November 22, 2021. The 2019 Massachusetts tax return included a Schedule C which shows a gross income from self-employment of \$7,500, expenses in the amount of \$4,350, and a net income of \$3,150.
3. The gross income reported on the 2019 Schedule C was calculated by the claimant based on the \$150 a week she testified she received in cash for her employment as a nanny. The claimant then multiplied that amount by fifty on the assumption she worked fifty weeks.
4. The claimant did not provide any documentation of her employment such as a bank statements [sic] showing deposits, W-2, 1099 or any paystubs. The claimant did not provide any copies of correspondence with the employer.
5. The claimant had no other employment in 2019 or 2020.
6. On June 7, 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. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant testified that she was employed as a nanny in [Town A], Massachusetts in 2019. The claimant testified that she worked approximately 8-10 hours a week across several days a week and was paid \$150 a week in cash. The claimant testified that she worked as needed. The claimant said that she drove from her home in [Town B], Massachusetts, to her work. It is not credible that the claimant would drive some eighty miles each way for several times a week for a few hours work at a time.

The claimant was unable to provide any documentation of her employment nor any contemporaneous correspondence with her employer. The claimant provided a letter from the alleged employer dated October 13, 2021. The letter stated the claimant was paid \$125-150 a week in cash and worked as needed. The letter states that the claimant's services were not required because the employer was at home during the pandemic but does not address why the claimant was not apparently employed after December 2019 and prior to the pandemic in January or February 2020.

The claimant filed her 2019 taxes in November 2021, after the original hearing, based on her calculation of earning \$7,500 in 2019. That amount however was

derived by multiplying \$150 by fifty weeks. Both the claimant's testimony and the letter from the employer were that the claimant worked as needed with variable hours, so it is very unlikely that the claimant worked fifty weeks in 2019 and was paid \$150 for each week's work. The claimant acknowledged that she could not recall if and when she took time off in 2019 and there are no employment records. The figure of \$7,500 is speculative and so a 2019 tax return and tax return based on that amount should not be regarded as proof of employment.

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 meet her 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), 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-employment² at some point between the start of the applicable tax year and the date the claimant filed for benefits. *See* U.S. Department of Labor 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 or that the work must have been performed in the filing state.

The claimant filed for PUA benefits effective March 15, 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 March 15, 2020.

At both hearings, the claimant testified that she worked as a nanny in 2019 for a family in Massachusetts. However, because she was unable to provide contemporaneous documentary evidence verifying that she performed services for this family in 2019, the review examiner rejected this testimony as not credible. Such an assessment is within the scope of the fact finder's role, and, unless the assessment is unreasonable in relation to the evidence presented, it will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Upon review of the record, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

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

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

In the absence of any other evidence indicating that the claimant was working or planning to commence work during the period between January 1, 2019, and March 15, 2020, we believe that the review examiner's denial of benefits is supported by the record and consistent with the law.

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

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week ending January 2, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 21, 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.

LSW/rh