

The claimant testified that he was self-employed as the principal owner of a chamber of commerce for veteran-owned businesses and was unable to conduct his regular business activities as a result of the COVID-19 pandemic. However, he was unable to provide credible documentary evidence showing that he was working in Massachusetts or that his work was negatively impacted by the COVID-19 public health emergency. He is ineligible for PUA benefits.

**Board of Review
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Issue ID: N6-H5LK-45PP

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 December 20, 2020, which was denied in a determination issued on April 13, 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. The claimant sought review by the Board, which dismissed the appeal as untimely, and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On May 10, 2022, the District Court ordered the Board to consider the merits of the claimant's appeal. Pursuant to this order, we remanded the case to the review examiner to take additional evidence pertaining to the claimant's self-employment during the 2019 and 2020 calendar years. 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 present credible evidence showing he was working in Massachusetts in 2020 when his work was impacted by the COVID-19 pandemic, 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 December 20, 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 certified in his PUA application that a child or other person in his household for which he is the primary caregiver is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for him to work; that he is unable to reach his place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency; that he was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency; that his place of employment is closed as a direct result of the COVID-19 public health emergency; and, that he is self-employed (including an independent contractor and gig worker) and experienced a significant reduction of his customary or usual services because of the COVID-19 public health emergency.
3. The claimant resides in Massachusetts.
4. The claimant is the founder and principal of an organization established as a chamber of commerce to assist veterans (the company).
5. The company did not file tax returns in 2019 or 2020.
6. The claimant did not file federal or state personal tax returns in 2019 or 2020.
7. The company did not have revenue or expenses in 2019 or 2020.
8. The claimant has an email dated March 18, 2020 to meet with an individual. The individual is not an employee of the company. The individual does not have an employment agreement with the company. The individual did not receive any wages or other compensation from the company.
9. The claimant has Articles of Incorporation filed with the State of Nevada on April 18, 2014, listing an address of [Location A] in Washington, D.C.
10. The claimant incorporated the company in Nevada, instead of Massachusetts or Washington D.C., at the recommendation of the company he consulted for obtaining tax benefits.
11. The claimant did not physically perform work for the company in the State of Nevada.
12. The claimant did not physically perform work for the company in Washington, D.C.
13. The claimant operates the company from his home in [City A], Massachusetts.

14. The claimant has an SS-4 letter dated April 18, 2014 from the United States Internal Revenue Service assigning an Employer Identification Number (EIN) to the company at the address of [Location A] in Washington, D.C.
15. The claimant has a business certificate filed with the City Clerk of [City A], Massachusetts on May 7, 2021, bearing the company name, the claimant's Massachusetts address, a [Location B] address in Washington, D.C. and noting the company is internet based.
16. The claimant has a company brochure with an address of [Location C] in Washington, D.C.
17. The claimant has an unsigned draft hotel agreement with a hotel located in [City B], VA dated December 2, 2018, for single night events scheduled approximately three months apart from July 2019 to December 2020. The company's address listed on the agreement is [Location A] in Washington, D.C.
18. The claimant has a business card with an address of [Location A] in Washington, D.C. The business card listed an office and cell phone number with Washington, D.C. area codes. The claimant listed his office number associated with a location in Washington, D.C. because he felt it was important to present a national presence from Washington, D.C. to market the business.
19. The business card listed an 888 number for members and prospective members that the claimant closed in approximately 2018 due to expense.
20. The claimant no longer uses the numbers on the business card and no longer uses the business cards.
21. Neither the claimant nor the company organized or attended any events in the first few months of 2020 prior to the onset of the COVID-19 pandemic.
22. The claimant did not agree to host or attend any trade shows or events in 2020 that were cancelled due to the COVID-19 pandemic.
23. Typically, planning and scheduling events is done months in advance. Without knowledge of when the pandemic would end, the claimant did not pre-plan for future events to be hosted post-COVID-19.
24. The claimant has a letter from his wife dated June 19, 2021 affirming that the claimant established the company in 2012, and the company continues to operate under the claimant's management.
25. The claimant has a letter from a bank indicating that a certain checking account was frozen and ultimately closed due to an error in the corporate name raising competing trademark violation concerns that have been resolved with a new account opened.

26. The claimant has monthly business bank statements in the business name for the months ending December 31, 2020, February 28, 2021, March 31, 2021, April 30, 2021, and May 31, 2021. For the monthly statement period ending December 31, 2020 the opening balance is \$4.02 and an online transfer of \$5.98 left a closing balance of \$10.00. For the monthly statement period ending February 28, 2021, the opening balance was \$7.00 and an online transfer of \$4.00 left a closing balance of \$3.00. For the monthly statement periods ending March 31, 2021, April 30, 2021, and May 31, 2021 there was no activity and the balance remained \$3.00.
27. On April 13, 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 February 8, 2020. The claimant appealed the DUA's determination.
28. The claimant has an email dated 4/29/2013 from a technology vendor; an email dated 7/16/2013 from a hotel in Connecticut; a signed agreement with [Conference Center] for accommodations from 9/5/2013 – 9/7/2013; an invoice dated 1/21/2014 showing amount due of \$3,225.90 and an amount over ninety days past due of \$2,899.80; an electronic receipt dated 8/20/2014 from 1800Accountant; and a collection notice dated 9/15/2014 to resolve a past due balance of \$171.29.
29. The claimant also has an email exchange dated 1/21/2022 for an annual subscription renewal with a computer antivirus company; an email dated 11/10/2021 from an on-demand office center requesting payment of \$716.40 owed; a second email dated 3/20/2022 from this same vendor sent to the claimant requesting payment of \$1,456.44 owed; a bill from this vendor received by email on 4/1/2022 for unpaid charges, a late fee, service charges and a mail forwarding fee totaling \$1,648.29 due; an invoice dated 3/10/2022 from a virtual office vendor noting a refundable service retainer deposit and monthly fee amount which total to \$381.48; an invoice from this vendor dated 5/17/2022 showing a balance forward of \$219 and a monthly invoice amount with fees totaling \$464.90 owed; and, an invoice dated 6/21/2022 for a subscription charge of \$12.99.

Credibility Assessment:

The claimant was not responsive to the [Board of Review]'s request to provide his 2019 and 2020 federal and state personal tax returns, including any tax documentation relating to the business's profits and losses in both years. While the claimant asserted that his business earned approximately \$5,000 in revenue during the 2019 calendar year and this was below the income level that would require he file taxes, the claimant admittedly had no knowledge of the company's total gross revenue for 2019 and admittedly did not have supporting documentation. As for expenses in 2019, the claimant maintained that these totaled approximately \$10,000

for internet, virtual office, office supplies, telephone, and answering service. However, he failed to provide invoices for these expenses to corroborate his testimony. Furthermore, the claimant alleged business expenses in 2020 totaled approximately \$10,000 for website upgrades of page rewrites and coding, development of online merchandise sales, and production of YouTube promotional videos. However, the claimant did not have any invoices or payment documents associated with these alleged expenses. As for the company's sources of revenue in 2019 and 2020, the claimant maintained that the only source of revenue was from minimal advertising sales for the website. However, the claimant did not submit documentary evidence verifying the sources of the business's revenue in 2019 and 2020 and testified that documentation of business revenue from 2019 and 2020 was not available. The lack of corroborating documentation for the 2019-2020 time period detracts from the claimant's credibility regarding revenue, expenses and business operations at that time.

When the claimant was asked why the company's brochure had a different Washington, D.C. address from the Articles of Incorporation and Business Certificate, the claimant did not have a logical or [sic] explanation. The claimant asserted that the business moved from an office building in [City A], Massachusetts and began operating from his home but that does not explain the differing Washington, D.C. addresses.

The submitted business card and the December 2018 unsigned contract for an event space in [City B], VA listed the same address on [Location A] in Washington, D.C. for the company's location. While the December 2018 unsigned contract listed proposed dates of events through December 2020, this was not a completed, signed, executed contract between the claimant and the event space. The claimant was clear and candid in his admissions that neither he nor his company organized or attended any events in early 2020 pre-pandemic and that he did not agree to host or attend any trade shows or events in 2020 that were cancelled due to the COVID-19 pandemic. The claimant was also forthcoming that he did not have documents such as completed business agreements, contemporaneous correspondence between the claimant's company and event venues, or other contemporaneous business documents verifying the company's activities in the beginning of 2020 or scheduled events cancelled as a result of the COVID-19 pandemic.

Regardless of the differing Washington, D.C. addresses on differing paperwork, the claimant's assertions that the business was operating in 2019 and 2020 are not credible. The claimant maintained that the additional evidence with the prior submitted documents showed a continuity of business activity of a web presence, business filings, continuing activity, and google hits to the website, which provide a wide enough picture of the claimant's business activity to support that work was impacted in 2020 because of the COVID-19 pandemic. However, the invoices the claimant pulled up to provide to the remand hearing do not directly address the specific evidence the [Board of Review] requested. In addition, the documents provided from the 2013-2014 time period place emphasis on the gap in operations and do not support a finding that the claimant's business had ongoing operations

with scheduled events that were impacted by the COVID-19 public health emergency. The evidence provided from 2021 and 2022 do not show established activity that was impacted by the COVID-19 public health emergency either. It is not believable that an individual operating a company in 2019 and 2020 would not have corroborating, contemporaneous, documentation of the company's income, expenses, and revenue sources.

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 did not meet his burden to show that he was working in Massachusetts or that his work was impacted by the COVID-19 pandemic.

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 order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act. Among the criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is that an individual will be eligible for PUA benefits if the individual was "unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities." Further, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.² Therefore, in order to be eligible for benefits, the claimant must show that he had work in Massachusetts that was negatively impacted by the COVID-19 pandemic.

The claimant is the founder and owner of an organization offering itself as a chamber of commerce for veteran-owned businesses. Consolidated Finding # 4. He contended that the COVID-19 public health emergency negatively impacted his organization's revenue and also prevented him and his organization from hosting and attending events and trade shows. However, after conducting a comprehensive review of the documentary evidence of record and the claimant's testimony at both hearings, the review examiner rejected as not credible the claimant's testimony that his organization was impacted by the COVID-19 public health emergency. 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).

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

² *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL)16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

In accordance with the Board's remand order, the review examiner inquired into a wide variety of topics pertaining to the claimant's organization and how it may have been impacted by the COVID-19 public health emergency. The claimant testified that his organization earned approximately \$5,000 in revenue in 2019 and incurred expenses exceeding \$10,000 in both 2019 and 2020. However, he was unable to provide any documentation corroborating these figures. Despite having retained a record of operational expenses and invoices from 2013 and 2014, he was notably unable to provide similar documentation from 2019 or 2020. *See Consolidated Findings ## 28 and 29.* He was also unable to provide any banking statements or tax records substantiating his testimony about his revenue streams and operational expenses in either year. Consolidated Findings ## 5, 6, and 26. We agree that the claimant's inability to produce such documentation detracts from the overall credibility of his testimony.

Further, as discussed in the credibility assessment, the claimant testified that he could not provide any completed business agreements, contemporaneous correspondence, or other documents verifying that the company had been engaged in business activities that were interrupted or otherwise impacted by the COVID-19 public health emergency. *See Consolidated Finding # 17.* The claimant also conceded that neither he nor his organization had scheduled any events for 2020 or had planned to attend any trade shows or events in 2020. Consolidated Findings ## 21–23. Absent any evidence substantiating the claimant's testimony that the COVID-19 public health emergency impeded his regular operations or otherwise had a negative financial impact on his organization, we see no reason to disturb the review examiner's credibility assessment on appeal. Accordingly, we conclude that the claimant failed to meet his burden to show that his self-employment was impacted by the COVID-19 pandemic.

We, therefore, conclude as a matter of law that the claimant has not met his burden to show that he was in unemployment within the meaning of the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning December 20, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 29, 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