

In a detailed credibility assessment, the review examiner carefully considered the claimant’s conflicting testimony and discrepancies in his supporting documentation to render a finding that the claimant was not engaged in self-employment prior to the pandemic. Therefore, the claimant failed to prove that he lost work for a listed reason under the CARES Act, and he is not entitled to PUA benefits.

**Board of Review
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Issue ID: N6-H7F2-6PR4

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. Benefits were denied on the ground that the claimant failed to show that he lost work due to the COVID-19 public health emergency, as required by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020.

The claimant filed a claim for PUA benefits with the DUA, effective December 6, 2020, which was denied in a determination issued on May 17, 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 in a decision rendered on January 14, 2022. The claimant sought review by the Board, which dismissed the claimant’s appeal due to his failure to attend a remand hearing, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On March 3, 2023, the District Court remanded the case back to the Board to afford the claimant the opportunity to participate in another hearing. Consistent with this order, we remanded the case to the review examiner to take additional evidence to consider further documentation which purports to show that the claimant lost work because of the pandemic. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact.

The issue before the Board is whether the review examiner’s decision, which concluded that the claimant failed to present credible evidence to support his testimony that he lost either employment or self-employment in connection with a carpet cleaning business as a result of the COVID-19 public health emergency, 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 original and remand hearings, 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. On May 14, 2021, the claimant filed a claim for Pandemic Unemployment Assistance (PUA) benefits, with an effective date of December 6, 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 was not self-employed in Massachusetts in 2019 and/or 2020 prior to the COVID-19 pandemic.
3. On May 17, 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.
4. The claimant appealed the DUA's determination.
5. On 8/21/2021, the claimant's apartment was the scene of a police force and first responders' incident.
6. On December 17, 2021, the claimant had wrist surgery.
7. The claimant began meeting with a clinician weekly in February 2022.

Credibility Assessment:

In the claimant's initial filing for PUA, he reported that his place of employment closed as a direct result of the COVID-19 public health emergency; that he was not self-employed; and that he did not have earnings in excess of \$89.00 in any work week between 12/6/2020 and 5/8/2021.

At the original hearing, the claimant alleged that he had a carpet cleaning business, which was mostly a cash business run out of his friend's autobody shop, that was negatively impacted by the emergency pandemic shutdown of 2020. The claimant maintained he did not initially file his 2020 taxes because he did not work much after February or March 2020. The claimant asserted he left the autobody shop because the rent was too high and there was too little business. When the review examiner asked for business records, he reported keeping all his records in a box somewhere, but he would have to look for the box and see if he could find it to send in any business bank statements, receipts or invoices.

At the remand hearing, the claimant's assertions changed, stating that he ran his business out of his apartment (not his friend's autobody shop) and stored business supplies with his family. As for the claimant's business records, the claimant maintained the box he kept them in was in his apartment but went missing after an incident and police investigation. While the claimant submitted a police report dated 5/13/22 of this incident on 8/21/2021, the claimant merely believed that the

box went missing because of the incident, and admittedly did not report any missing box to the police. The claimant maintained that he has been unable to return to the apartment after the 8/21/2021 incident but remains responsible for rent. When asked where the claimant currently resides, he said with family.

Nonetheless, the claimant filed purported federal and Massachusetts state tax returns on 5/19/2022 (for 2019 and 2020) and 9/29/2022 (for 2021), without his business records. The claimant presented 2 different purported 2019 Schedule C tax documents. The first purported 2019 Schedule C (“C#1”) was in a different business name bearing a handwritten social security number different than that of the claimant. The business was listed as “Auto Sales, Carpet and Upholstery Cleaning,” reporting the claimant’s gross earnings from this business as \$105,479.00, and net earnings from the business as \$22,586.00. However, the second purported 2019 Schedule C (“C#2”) listed the business as “Carpet And Upholstry (sic) Cleaning,” reporting the same gross (\$105,479.00) and net earnings (\$22,586.00) [sic] adjusted gross income was \$20,990.00. It is not believable that these are authentic given the discrepancy in social security number and business type. Also, it is not believable that the gross and net earnings would be exactly the same for the alleged businesses, C#1 mentioning the autobody shop and C#2 not doing so. On the claimant’s purported tax documents for 2020, the Schedule C reported gross earnings from the business as \$145,856.00, net earnings from this business as, \$72,339.00, and an adjusted gross income of \$67,228.00. On the claimant’s purported tax documents for 2021, the Schedule C reported gross earnings from the business as \$125,000, net earnings from the business as \$72,900, and an adjusted gross income of \$67,750.00.

It is inconsistent to accept both that the claimant’s business was negatively impacted when he allegedly stopped working in March 2020 and that his purported tax documents are accurate [sic] the tax years 2020 and 2021, because the claimant’s allegations that he made less money during the pandemic are not aligned with his tax returns reporting more income in 2020 and 2021 than 2019. Furthermore, [sic] is not logical, plausible, or believable that the claimant was able to accurately reconstruct his income and expenses for his tax returns without his business records. The claimant alleged that while he stopped working in early March 2020, clients continued to pay him for work from 2019 as reported on his 2020 and 2021 tax returns. However, if the claimant was paid cash in 2020 and 2021, he has no contemporaneous documentation of his cash receipts, nor did he declare income when requesting weekly PUA benefit payments.

Ultimately, these purported 2019, 2020, and 2021 tax returns documents prepared for the remand hearing without business records are not deemed credible.

As for bank account records, the claimant submitted documentation from a 2019 sports entity bank account which the claimant asserted that he used for an automobile sales business. However, it has no traceable carpet cleaning business transactions. The claimant submitted documentation of a non-business trust account, with no business transactions. The claimant also submitted documentation

for one business account (“A”) for January 2020 through March 2020. The January 2020 statement notes a check written and cashed with insufficient funds and a negative balance, the February 2020 statement shows a negative balance, and the March 2020 statement shows where the bank wrote off the negative balance and closed the account. Furthermore, the claimant submitted documentation for another business account (“B”) for July 2020 that shows a \$56,681.00 deposit and a \$56,681.00 withdrew [sic] leaving a \$0.00 ending balance. None of these bank account statements are credited as substantial evidence of a legitimate business enterprise. When questioned about the bank statements showing large deposits and withdrawals and wire transfers, the claimant alleged that he sold a car and deposited money into his bank account and then made offshore wire transfers that were for a building he is building in his home country. When questioned about the July 2020 account B statement, the claimant could not remember where money for the \$56,681.00 deposit and the \$56,681.00 withdrew [sic] leaving a \$0.00 ending balance came from, and implied that his bank account was closed to avoid the appearance of money laundering. The claimant’s lack of memory of the origin of this sum of money is not believable.

The claimant proffers a notarized letter from a supposed potential client for work for a floor installation project that was allegedly canceled due to the pandemic. The letter is not contemporaneous with the alleged work, instead it is dated on or about 4/12/2023 and was created for the reinstated, reconvened remand hearing. The letter lacks any indication of authenticity because it has no letterhead, contains poor grammar, has capitalization irregularities, and lacks any labor and material breakdown, and is non-specific about the alleged start and end dates other than “To Start Back in Sometimes in March Of 2020 An 6 months Job”.

While the claimant has a note from his health care provider citing his wrist surgery on 12/17/2021, and a police incident report dated 5/13/2022, these documents do not corroborate the claimant’s allegations about being self-employed. The claimant’s letter from his clinician dated 5/13/2022 cites what the claimant self-reported to the clinician in weekly sessions, including that he “lost his job” and had to move away from family and friends (which is inconsistent with his assertion in the remand hearing that he was residing with family). The 5/13/2022 letter from the clinician is not credible evidence of the claimant’s employment status prior to the pandemic.

The claimant did not submit any communications with clients about changes to cleaning schedules brought on by the pandemic, as requested by the BOR, to substantiate his assertions about being self-employed.

Because of the claimant’s overall memory lapse and inconsistent and contradicting statements, this review examiner does not find the claimant’s testimony or documentation substantial and credible proof of self-employment in Massachusetts impacted by the COVID-19 pandemic.

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 is ineligible for PUA benefits.

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 requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that he is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa) – (kk).

Due to discrepancies between the claimant's statements in his PUA application and testimony during the original hearing, as well as his failure to provide documentary support for his testimony, the review examiner concluded that the claimant did not prove that he had experienced a loss of work for any listed reason under the CARES Act, § 2102. Following another hearing ordered by the District Court, the review examiner carefully considered the claimant's further testimony and new documentary evidence. As shown by the limited consolidated findings of fact and extensive credibility assessment, the review examiner did not believe the claimant's assertion that he had been performing carpet cleaning services which were negatively affected by the COVID-19 public health emergency. *See Consolidated Finding # 2.*

The credibility assessment describes in detail the basis for rejecting the claimant's testimony that he ran a carpet cleaning business that lost work due to the pandemic. 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). "The test is whether the finding is supported by 'substantial evidence.'" *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted). It is evident that the review examiner carefully considered all of the evidence which the claimant had presented at the original and remand hearings. His basis for discrediting exhibits and testimony is reasonable and supported by the record.

Given the lack of credible evidence that the claimant had been running a carpet cleaning business prior to the pandemic, there is no basis to conclude that he became unemployed due to the COVID-19 public health emergency. We, therefore, conclude as a matter of law that the claimant has not

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

met his burden to show that he was out of work for one of the eligibility reasons listed under § 2102(a)(3)(A)(ii)(I) of the CARES Act.

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning December 6, 2020.

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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