

The claimant, a self-employed automobile dealer, failed to prove that he was working in Massachusetts when his business was affected by the COVID-19 pandemic. The evidence presented shows he operated a business in the State of Washington. The claimant is ineligible for PUA benefits under a Massachusetts claim.

**Board of Review
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Issue ID: N6-H8MV-TKKM

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 on the grounds that the claimant did not show he was working in Massachusetts when his business was affected by the COVID-19 public health emergency.

The claimant had filed a claim for PUA benefits with the DUA, with an effective date of January 10, 2021, which was denied in a determination issued by the agency on July 20, 2021. The claimant appealed 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 February 23, 2022. The claimant sought review by the Board, which affirmed the review examiner's decision, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On October 6, 2022, the District Court ordered the Board to consider the evidence in the record of the claimant's self-employment ties to Massachusetts, specifically referring to his testimony and a Massachusetts tax return.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant failed to show that he was working in Massachusetts or planning to work in Massachusetts when he was affected by the COVID-19 pandemic, 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 hearing, the review examiner's decision, the claimant's appeal, and the District Court's Order, we affirm the review examiner's decision.

Findings of Fact

The review examiner's findings of fact and credibility assessment are set forth below in their entirety:

1. On January 11, 2021, the claimant filed a claim for Pandemic Unemployment Assistance (PUA) benefits, with an effective date of January 10, 2021.

2. In the claimant's initial filing for PUA, the claimant certified that he was self-employed, an independent contractor or a gig worker, and that COVID-19 had severely limited his ability to perform his normal work.
3. The claimant owned a business that was registered in the [S]tate of Washington.
4. The claimant's business was in the wholesale sales of seafood and automobiles.
5. As of the effective date of his claim, the claimant was not employed or self-employed in Massachusetts.
6. The claimant had no Massachusetts employment or self-employment in 2020.
7. The claimant did not have any income in Massachusetts and did not file a Massachusetts state tax return in 2020.
8. On July 20, 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 January 10, 2021.
9. The claimant appealed the DUA's determination.

Credibility Assessment:¹

There are inconsistencies with the claimant's testimony. The claimant certified on his initial claim for PUA benefits that he was self-employed, an independent contractor or a gig worker. The claimant provided documents showing he owned a business in [City], Washington. However, he did not show he had any employment or self-employment in Massachusetts at the time he asserts to have been affected by COVID-19, or in the previous tax year (2020). The documentation he provided for the purpose of receiving unemployment benefits, such as business bank statements (sent to the Washington address) or SSA-1099 (showing Social Security benefits the claimant received in 2020), do not support any self-employment in Massachusetts. The claimant also does not have any receipts or records of any sales he made, or any business conducted at all, in Massachusetts at the time he filed for PUA, nor in the tax year prior. All documentary evidence, including the postal stamp of [City], Washington on the claimant's mailed in documents, indicates the claimant's self-employment was in Washington, not Massachusetts. There is no evidence in the record, aside from the claimant's own self-serving testimony, that he was employed or self-employed in Massachusetts and when affected by COVID-19.

While it is likely true that the claimant's business was affected by COVID-19, it (and he) was affected where the business is registered, in Washington [S]tate, not

¹We have copied here the portion of the review examiner's decision which sets forth his credibility assessment.

Massachusetts. Due to the discrepancies in the claimant's testimony and evidence regarding how he was impacted by COVID-19, including that he was a self-employed salesman in Massachusetts that was impacted by COVID-19, it is concluded the claimant's testimony is not credible. Based upon the evidence in the record, it is concluded that the claimant has not met the eligibility requirements for a Massachusetts PUA claim. Therefore, he is not entitled to benefits.

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 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. 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, which denied the claimant benefits for failure to show that he was self-employed individual working in Massachusetts when he was affected by the 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. In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act.² 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). Among the criteria for eligibility under §2102(a)(3)(A)(ii)(I)(kk), is that an individual will be eligible for PUA benefits if the individual was self-employed (including independent contractor and gig worker) and experienced a significant diminution of his or her customary or usual services because of the COVID-19 public health emergency, even absent a suspension of services.³ 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. "If the individual worked in more than one state at that time, the individual may file a PUA claim in any of those states."⁴ Therefore, in order to be eligible for benefits, the claimant must show that his work in Massachusetts was negatively impacted by the COVID-19 pandemic.

Here, the review examiner's decision properly concluded that the claimant did not qualify for PUA benefits. Prior to his effective date, the claimant contends that he was operating a wholesale automobile business in Massachusetts. However, the record reflects that the claimant owned and operated his business in the State of Washington. *See* Finding of Fact # 3. Corporate tax returns for calendar tax years 2019 and 2020 list the principal office of the business in [City], Washington. *See* Exhibit 3.⁵ Both the 2019 and 2020 Form 1120 U.S. Corporate Income Tax Returns itemize

² Pub. L. 116-136 (Mar. 27, 2020), § 2102.

³ See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4, (Jan. 8, 2021), Attachment I, C(1)(kk), p. 1-8.

⁴ See UIPL 16-20, Change 6, (Sept. 3, 2021)2, 4(c) pp. 7-8.

⁵ The specific information contained Exhibit # 3, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus

deductions for license and permit fees. *See* Exhibit 3. However, the claimant did not present either a Massachusetts auto dealers license or a permit to conduct business.

Furthermore, the various redacted business bank statements for 2019 that he presented as evidence list the business address as [City], Washington and reflect that the account was opened in Washington State. *See* Exhibit 9.⁶ The February, 2019 bank statement reveals the business paid taxes to the State of Washington's Department of Revenue. *See* Exhibit 9. However, any evidence pertaining to claimant's business activity in 2019 is outside the relevant time period, as it fails to prove claimant performed any work in Massachusetts in 2020 when the COVID-19 public health emergency would have affected his business. The review examiner correctly found that the claimant failed to provide any evidence of employment or self-employment in Massachusetts in the year prior to his January 10, 2021, effective date. *See* Findings of Fact ## 1, 5, and 6.

The District Court's Order states that the record contains testimonial and documentary evidence that that claimant worked in Massachusetts. More specifically, it states that the claimant's testimony that he worked in Massachusetts is corroborated by a Massachusetts tax return. However, after a thorough review of the record, the Board finds no evidence that the claimant submitted a Massachusetts tax return.

As noted in the credibility assessment, the record shows the claimant did not have any receipts or records of any sales or business conducted in Massachusetts at the time he filed for PUA or in the previous year. Neither the 2019 bank statements, the 2020 federal corporate tax return nor the 2020 Form SSA-1099 (which shows the claimant received Social Security benefits) are evidence demonstrating that the claimant was working in Massachusetts. In light of this record, the review examiner properly found that the claimant did not have any Massachusetts income and did not file a Massachusetts tax return. *See* Finding of Fact # 7.

We, therefore, conclude as a matter of law that the claimant has failed to meet the requirement that he was self-employed in Massachusetts when his business was affected for the reason listed under 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 under a Massachusetts claim for the week beginning January 10, 2021, and thereafter.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 4, 2023

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 Exhibit 9 is also part of the unchallenged evidence in the record.



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

DY/rh