

**The claimant did not present any credible evidence to show that he was working or was scheduled to begin work in 2020 when he was impacted by the COVID-19 pandemic, and therefore, is not eligible for PUA benefits.**

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

**Issue ID: N6-H962-8492**

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 8, 2020, which was denied in a determination issued on July 6, 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 1, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to establish that he was unemployed for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, 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 obtain additional information about the claimant's employment status in 2020. 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 was neither working nor scheduled to begin work in Massachusetts when he was affected by the COVID-19 public health emergency, 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 March 8, 2020.

2. The Department of Unemployment Assistance (DUA) determined that the claimant has a weekly benefit amount of \$267.00.
3. The claimant's initial PUA claim indicates that the claimant was self-employed, an independent contractor or a gig worker, and that COVID-19 has severely limited his ability to perform his normal work.
4. The claimant was residing in a Massachusetts recovery house when he applied for PUA benefits, and was not self-employed, an independent contractor or gig worker.
5. The claimant was not paid for any services that he performed while residing at the recovery house.
6. The claimant does not have any 1099 tax documents from anyone that he performed work for from 2018 through 2021.
7. The claimant has not filed tax returns for any work that he performed from 2018 through 2021.
8. The claimant did not have an offer of work which was affected by the COVID-19 public health emergency.
9. The claimant did not receive an offer of work letter in his email.
10. The DUA issued a disqualifying determination to the claimant on July 6, 2021.
11. The claimant appealed the determination.

Credibility Assessment:

Consideration was given to the claimant's contention that he was self-employed, subcontracting for a landscaping company from 2018 through 2020. The claimant offered a letter and witness testimony in support of his assertion that he worked as a self-employed landscaper. Consideration was given to the claimant's witness and his testimony. The witness's testimony that his young niece prepares his business correspondence, and that she is the reason for the inclusion of nonsensical phrases and misspellings in his business letters is found to be not credible. Additionally, the claimant's inability to produce tax documents or paystubs from this employer results in the claimant's testimony being considered not credible.

Consideration was given to the claimant's testimony that he received a job offer letter in his email from a pizza restaurant chain. When presented the opportunity to produce the original email, the claimant indicated that he no longer had access to that email account because of an ex-girlfriend. As the job offer letter contained various spelling mistakes, did not appear to be on a genuine corporate letterhead, and the claimant was unable to provide the original email that he testified that he

received the letter in, the letter is considered to have been generated by the claimant for the purpose of obtaining PUA benefits and is not considered credible evidence.

In addition, the claimant provided documents purporting to show that he performed paid work at his recovery house. The claimant offered conflicting testimony as to whether the receipts that he submitted represented money that was paid to him as wages, or money that he received as a house manager with responsibilities relating to his recovery plan. As such, the receipts are not considered to be credible evidence that the claimant was paid wages by the recovery house. Additionally, the letter that the claimant presented from the owner of the recovery house refers to the claimant as a resident, and makes no mention of any wage paying position that the claimant participated in. As such, the claimant's testimony that he worked for the recovery house is not credible.

### 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 was not in unemployment for a listed COVID-19 reason.

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.<sup>1</sup> 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 they were "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." A claimant may also be eligible for PUA benefits under § 2102(a)(3)(A)(ii)(I)(gg), if he was "scheduled to commence employment and [did] not have a job or [was] unable to reach the job as a direct result of the COVID-19 public health emergency."

During both hearings, the claimant testified that he was self-employed in portions of 2020 and was later offered a job at a restaurant. After conducting a comprehensive review of the documentary evidence of record and the claimant's testimony at both hearings, the review examiner rejected the claimant's testimony and documentary evidence as not credible. 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). Upon review of the record, we see no reason to disturb the review examiner's credibility assessment on appeal.

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

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)(gg) or (kk).

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning March 8, 2020.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 5, 2022**



Charlene A. Stawicki, Esq.  
Member



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](http://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