

**Because the claimant was able to present documented proof of her employment in the tax year prior to filing her PUA claim, she remained eligible for continued PUA benefits after December 27, 2020, pursuant to the Continued Assistance Act.**

**Board of Review  
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Member  
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Member**

**Issue ID: N6-HF4F-H455**

### 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 as of December 27, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for PUA benefits with the DUA, effective June 28, 2020. In a determination issued on April 15, 2021, the DUA denied PUA benefits beginning December 27, 2020. 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 August 16, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to provide documentation substantiating employment, self-employment, or the planned commencement of employment or self-employment, as required by § 241 of the Continued Assistance Act.<sup>1</sup> 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 for additional evidence to consider employment documents submitted with the claimant's appeal to the Board. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact and credibility assessment. 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 ineligible for PUA benefits because she failed to present credible evidence of prior employment or the planned commencement of employment, 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:

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<sup>1</sup> Continued Assistance for Unemployed Workers Act of 2020, Division N, Title II, Subtitle A of the Consolidated Appropriations Act, 2021 (Dec. 27, 2020).

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) with an effective date of June 28, 2020.
2. From 2013 to 2014, the claimant worked as a recovery aide at a treatment center.
3. The claimant worked as a peer advisor at a university in Massachusetts in 2019.
4. The claimant was issued a 2019 W-2 form showing she was paid \$5,451 for her services in Massachusetts in 2019.
5. The claimant did not have an offer to start work in 2020. The claimant did not lose any work in 2020 due to the COVID-19 pandemic.
6. On April 15, 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.
7. The claimant appealed the DUA's determination.

#### Credibility Assessment:

The claimant provided credible testimony and documentation showing that she worked as a peer advisor at a university in Massachusetts in 2019.

The claimant did not provide credible and substantial evidence to show that she was scheduled to work in 2020. The claimant's testimony as to whether she was scheduled to work in 2020 was not credible. The claimant submitted a letter from her brother's social worker. The letter states that her brother was thinking about offering the claimant a care giver position in August of 2020. But according to the claimant's own testimony, she was offered the care giver position in June of 2020. The letter contradicts claimant's testimony and detracts from the credibility of the claimant's testimony. As the claimant's testimony and the document were inconsistent, the claimant did not present credible evidence to show that she was offered work in 2020, and a finding of fact was made accordingly.

#### 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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject that portion of Consolidated Finding # 4, which states that a 2019 Form W-2 shows that the claimant was paid \$5,451 for her services, as the amount is incorrect and

inconsistent with the underlying exhibit.<sup>2</sup> In adopting the remaining findings, we deem 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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant has failed to meet the documentation requirement to be eligible for PUA benefits after December 27, 2020.

The claimant in this case seeks PUA benefits, an 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.<sup>3</sup> In December, 2020, Congress added an additional requirement for individuals to continue receiving PUA benefits. Individuals who applied for PUA benefits before January 31, 2021, and received a payment of PUA on or after December 27, 2020, must provide documentation substantiating employment, self-employment, or the planned commencement of employment or self-employment.<sup>4</sup> It is intended to show a recent attachment to the labor force and to prevent fraud.<sup>5</sup> The documentation must establish proof of employment, self-employment, or the planned commencement of employment or self-employment at some point between the start of the applicable tax year and the PUA claim filing date.<sup>6</sup>

Since the claimant filed her claim effective June 28, 2020, the applicable tax year is 2019. The claimant has presented documentation to substantiate two separate types of employment — a summer job in 2019 and an offer to work as a caretaker for her brother starting in the summer of 2020.

To support her assertion that she planned to commence employment for her brother as a caretaker, the claimant presented numerous documents. In his credibility assessment, the review examiner states that the documents are inconsistent with the claimant's testimony as to the start date for this work, and he ultimately rejects the notion that she had an offer to perform this work at all. However, we need not decide whether she had an offer. Moreover, if she did, it is irrelevant whether such an offer was rescinded due to the COVID-19 public health emergency for purposes of the employment substantiation issue before us.<sup>7</sup> Because she has presented a 2019 Form W-2 showing that she was employed in 2019, she has met the documentation requirement in the issue before us.

We, therefore, conclude as a matter of law that the claimant has met the documentation requirement to substantiate her employment, as required under § 241 of the Continued Assistance Act.

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<sup>2</sup> See Remand Exhibit 5. Remand Exhibit 5 is the 2019 Form 1099, which shows wages paid in the amount of \$793.64. This exhibit is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus 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).

<sup>3</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>4</sup> See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), 4(b)(ii), p. 5.

<sup>5</sup> See UIPL 16-20, Change 4, Attachment I, C(2), p. I-10.

<sup>6</sup> See UIPL 16-20, Change 4, Attachment I, C(2)(b), p. I-11.

<sup>7</sup> Whether the claimant had an offer to work that was rescinded due to the COVID-19 public health emergency, and her eligibility for PUA benefits for the period that also includes prior to December 27, 2020, may be addressed in a case now pending at the Hearings Department in a separate issue, Issue ID # N6-HDTK-NL6J.

The review examiner's decision is reversed. The claimant is entitled to continue receiving PUA benefits for the week beginning December 27, 2020, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 7, 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](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.

AB/rh