

**The review examiner erred in failing to credit a 2019 federal tax return, state license, and notarized affidavit as documents which substantiate the claimant’s self-employment as a massage therapist during the relevant period. Held the claimant met her burden under the Continued Assistance Act, and she remains eligible for further PUA benefits.**

**Board of Review  
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**Issue ID: N6-H54P-4K6D**

## **ORDER TO REVOKE REMAND AND BOARD OF REVIEW DECISION**

### Introduction and Procedural History of this Appeal

The claimant appealed a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny Pandemic Unemployment Assistance (PUA) benefits. We reviewed, pursuant to our authority under G.L. c. 151A, § 41, and on August 18, 2023, we remanded the case for additional evidence. For reasons discussed below, we hereby revoke that remand order, and we reverse the review examiner’s decision on the existing record.

The claimant filed a claim for PUA benefits with the DUA, effective March 8, 2020, which was initially approved. However, in a determination issued on July 6, 2021, the agency denied 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 determination and denied further PUA benefits in a decision rendered on January 21, 2022. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant had failed to meet the eligibility requirement to substantiate employment, self-employment, or planned commencement of employment or self-employment, and, thus, the claimant was not eligible for further PUA benefits. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner’s decision, and the claimant’s appeal.

The issue before the Board is whether the review examiner’s decision, which concluded that the claimant’s documentary evidence was insufficient to prove that she had self-employment as a massage therapist in 2019, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

The review examiner’s 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. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. The claimant filed for benefits using a Massachusetts address.
3. The claimant was not employed during 2019 and 2020.
4. The claimant did not have an offer of employment at the time of her claim.
5. On July 6, 2021, the Department of Unemployment Assistance (DUA) issued a Notice of Non-Monetary Issue Determination–Employment Substantiation to the claimant, stating that she was not eligible for PUA benefits.
6. The claimant appealed the DUA’s determination.

[Credibility Assessment:<sup>1</sup>]

Although the claimant testified that she was a self-employed massage therapist during the years of 2019 and 2020, her testimony and documentation are not credible. The claimant failed to provide documentation such as 1099’s, business receipts, bank statements which may be used to substantiate self-employment earnings. The claimant submitted expense receipts and her personal bank statements. The expense receipts do not substantiate earnings were received from her self-employment. Her personal bank statements do not specifically show payments received from clients. Furthermore, the transactions were mostly withdrawals and not deposits. This documentation does not substantiate earnings from self-employment were received during the years of 2019 and 2020.

Though the claimant provided her 2019 and 2020 tax returns, it is not supplemented with receipts, bank statements, etc. showing earnings were received. Such documentation is needed to substantiate her earnings from self-employment. The tax returns cannot solely substantiate her self-employment.

The claimant provided a signed and notarized letter verifying her self-employment from 2015. This documentation cannot solely substantiate her self-employment within the years of 2019 and 2020.

### 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 original conclusion is free from error of law.

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<sup>1</sup> We have copied and pasted here the portion of the review examiner’s decision, which includes her credibility assessment.

After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portion of Finding of Fact # 3, which states that the claimant was not employed in 2019, for reasons discussed below. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to meet her burden of proof.

The claimant in this case seeks PUA benefits, a new 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>2</sup> Pursuant to the Continued Assistance for Unemployed Workers Act (Continued Assistance Act),<sup>3</sup> any claimant who filed a new application for PUA benefits on or after January 31, 2021, or any claimant who received a payment of PUA benefits on or after December 27, 2020, is required to provide documentation substantiating employment, self-employment, or planned commencement of employment or self-employment at some point between the start of the applicable tax year and the effective date of the individual's claim for PUA benefits.<sup>4</sup> There is no requirement that such documentation relate to work the claimant lost because of COVID-19, or that such work be located in any particular state.

Since the effective date of the claimant's PUA claim is March 8, 2020, she was required to present documentation to substantiate that she had employment, self-employment, or planned to commence employment or self-employment at some point between January 1, 2019, and March 8, 2020. To meet this burden, the claimant presented documentation to support her testimony that she had been a self-employed massage therapist in 2019. These included, *inter alia*, 2019 federal and state tax returns, her Massachusetts Massage Therapy License, bank statements, a notarized affidavit, and cancelled checks.<sup>5</sup> Nonetheless, the review examiner concluded that these documents did not meet her burden. We disagree.

Specifically, the review examiner discredited all of the claimant's evidence, because the claimant failed to produce such documentation as a Form 1099, or business receipts and bank statements that prove she had earnings from performing massage therapy services. The review examiner states that the tax returns and notarized affidavit were insufficient, in and of themselves, to substantiate her self-employment. In so ruling, the review examiner committed an error of law.

The Continued Assistance Act does not specify the type of documentation necessary to substantiate employment.<sup>6</sup> However, the U.S. Department of Labor (DOL) has advised state agencies:

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<sup>2</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>3</sup> Pub. L. 116-260 (Dec. 27, 2020), § 241.

<sup>4</sup> The Board acknowledges the ambiguity in the U.S. Department of Labor's interpretation of the period which one must substantiate employment or self-employment. Though the period is defined, "as some point between the applicable taxable year and the date of filing," the examples which follow show the Department's intention that the period to substantiate one's employment is between the applicable tax year and the claimant's effective date. The claimant must show a connection to the labor force before he or she became unemployed. *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), 4(b), p. 5, and Attachment I, C(2)(b), p. I-11.

<sup>5</sup> Although the review examiner discusses many of these documents in her decision, for some reason she failed to formally enter them as exhibits into the record. None of these documents are in dispute, as this was a single party hearing, and all of the documents were proffered by the claimant. Under these circumstances, the failure to enter them as exhibits is a non-prejudicial procedural error, and we decline to remand the case solely for this reason.

<sup>6</sup> *See* the Continued Assistance Act, § 241(a)(2).

[D]ocumentation to substantiate employment of self-employment need only demonstrate the existence of employment or self-employment at some point between the start of the applicable tax year and the date of filing...Proof of self-employment includes, *but is not limited to*, state or Federal employer identification numbers, business licenses, tax returns, business receipts, and signed affidavits from persons verifying the individual's self-employment.<sup>7</sup>

(Emphasis added.) By use of the phrase “is not limited to,” the DOL has made clear that a claimant may produce documentation other than Forms 1099 or business receipts and bank statements that prove transactions were from self-employment services. Moreover, nothing in the Continued Assistance Act or the DOL’s instructions require the claimant to produce more than one document.

In this case, though, the claimant did produce more than a single document. Her 2019 federal tax return reports self-employment income as a massage therapist. She also produced a massage therapy license from the Commonwealth of Massachusetts and a notarized affidavit from an individual who attests to observing the claimant perform her massage therapy services in 2019 and early 2020 prior to the onset of the COVID-19 pandemic.

The review examiner discredited these documents. The review examiner has an obligation to assess the credibility of evidence in rendering her findings of fact. *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). Nothing in the review examiner’s credibility assessment states that these documents are inauthentic or untruthful. She discredits them, and we assume that she did not incorporate them into her findings, based simply on her mistaken belief that they were legally insufficient to meet the claimant’s burden.

As the conclusions reached in the review examiner’s credibility assessment and Finding of Fact # 3 are based upon an error of law, we reject them. In short, the claimant has met her burden to produce documentation that constitutes substantial evidence of self-employment during the relevant period.

We, therefore, conclude as a matter of law that the claimant met the Continued Assistance Act requirement to present documentation to substantiate employment, self-employment, or the planned commencement of employment or self-employment.

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<sup>7</sup> UIPL 16-20, Change 4, Attachment I, C(2)(a), p. I-10.

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

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 14, 2023**



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