

The claimant established that, during his base period, he earned \$31,787.00 in net self-employment income from the performance of services and \$5,343.00 in wages. He is entitled to a PUA weekly benefit amount based upon total earnings of \$37,130.00. Since nothing in the record establishes that he performed services for his rental income, it may not be included in the calculation of his weekly benefit amount.

**Board of Review
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Issue ID: N6-F84K-665H

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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective March 8, 2020. The Department of Unemployment Assistance (DUA) determined the claimant's weekly benefit amount (WBA) to be \$610.00. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's initial determination in a decision rendered on February 18, 2021, finding that the claimant's PUA benefits should be calculated based on 2019 income of \$5,342.58. We accepted the claimant's application for review.

The WBA was modified after the review examiner determined that the claimant was eligible for only the minimum weekly benefit amount, as the claimant did not present sufficient evidence to verify his net income from self-employment. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal and supporting tax documentation, we remanded the case to the review examiner to consider the additional tax information submitted by the claimant. The claimant attended the remand hearing. Thereafter, the review examiner issued her 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 the claimant's WBA should be recalculated based on his W-2 wages alone, 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) effective March 8, 2020.
2. The Department of Unemployment Assistance (DUA) determined the claimant's weekly benefit amount (WBA) to be \$610.00.
3. In 2019, the claimant worked primarily as an independent consultant for schools and educational organizations.
4. In 2019, the claimant's gross income from self-employment as an educational consultant was \$77,183.94.
5. In 2019, the claimant's net income from self-employment as an educational consultant was \$31,787.00.
6. The claimant has a Schedule C attached to his 2019 federal income return and a Schedule C attached to his Massachusetts income tax return. On both Schedule Cs, the claimant reported a gross income of \$75,384.00 and a net profit of \$31,787.00 from his educational consulting business.
7. The claimant has 2019 Forms 1099 from his clients for his education consulting business that total \$75,383.94. In addition, the claimant has a check for \$1,800.00 from another client that was not included in the claimant's total net income from his educational consulting business reported on his Schedule Cs.
8. In 2019, the claimant also worked part-time as a bar tender. The claimant earned \$5,343.00 in wages from his work as a bar tender.
9. The claimant has a 2019 Form W-2 documenting his wages from his work as a bar tender. The claimant also has a 2019 federal income tax return and a Massachusetts income tax return on which he reported these wages.
10. In addition to his income from work, the claimant had income from renting out his property through an on-line short term rentals company.
11. In 2019, the claimant received a total of \$38,357.00 in rents and had a net loss of \$21,98.00 [sic] from real estate.
12. The claimant has a Schedule E that he attached to his 2019 federal tax return and a Schedule E that he attached to his 2019 Massachusetts income tax return on which he reported receiving \$38,357.00 in rent and a net loss of \$21,798.00 from real estate.
13. The claimant has a Proof of Income report from the short-term rental company through which he rents his property showing that he had gross earnings of \$30,556.33 from the company.

14. The claimant's total 2019 earned income consists of \$31,787.00 in net self-employment income as reported on the claimant's 2019 Schedule Cs and \$5,343.00 in gross W-2 wages. The claimant's earned income does not include rental income. Therefore, the claimant's total 2019 income for calculating his WBA is \$37,130.00.

Credibility Assessment:

The claimant's testimony was consistent and credible at both hearings. The claimant provided more detailed testimony and documentation regarding his work and income from 2019 in response to specific questions requested by the remand order.

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 disagree with the review examiner's legal conclusion that the claimant's WBA should be based only on the 2019 Form W-2 income of \$5,342.58.

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.¹ The CARES Act specifies that a claimant's benefit rate under the PUA program is governed by 20 C.F.R. § 625.6,² which provides, in relevant part, as follows:

(a) In all States, except as provided in paragraphs (c) and (d) of this section, the amount . . . payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the weekly amount of compensation the individual would have been paid as regular compensation, as computed under the provisions of the applicable State law for a week of total unemployment. In no event shall such amount be in excess of the maximum amount of regular compensation authorized under the applicable State law for that week.

1. Except as provided in paragraph (a)(2) or (b) of this section, in computing an individual's weekly amount . . . qualifying employment and wage requirements and benefit formula of the applicable State law shall be applied . . .

2. For the purposes of paragraph (a)(1) of this section, the base period to be utilized in computing the . . . weekly amount shall be the most recent tax year that

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

² CARES Act, § 2102(d)(1)(A)(i).

has ended for the individual (whether an employee or self-employed). . . . The self-employment income to be treated as wages for the purposes of computing the weekly amount under this paragraph (a) shall be the net income reported on the tax return of the individual as income from all self-employment that was dependent upon the performance of services by the individual. . . .

Self-employment is further defined at 20 C.F.R. § 625.2(o), to mean services performed as a self-employed individual.

In Massachusetts, the weekly benefit amount is based upon gross wages, as defined under G.L. c. 151A, § 1(s)(a), which provides, in relevant part, as follows:

(s)(A) "Wages", every form of remuneration of an employee subject to this chapter for employment by an employer, whether paid directly or indirectly, including salaries, commissions and bonuses, and reasonable cash value of board, rent, housing, lodging, payment in kind and all remuneration paid in any medium other than cash.

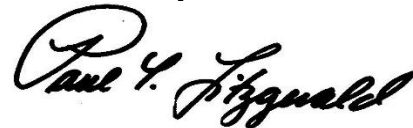
Thus, in accordance with applicable state law and the governing provisions of the CARES Act, a claimant's PUA benefit will be calculated based on a claimant's gross wages as well as net income from the performance of services in self-employment for the 2019 calendar year.

The review examiner's decision was based solely on the claimant's gross W-2 wages, because the claimant failed to provide sufficient documentation of his net income from self-employment for 2019. After remand, the findings now show that in addition to the claimant's gross W-2 wages of \$5,343.00, he had \$31,787.00 in net income from the performance of services during his 2019 tax year. *See* Consolidated Finding # 14. Since there is nothing in the record to establish that he performed services for the rental income, this income may not be included in the calculation of his WBA. Thus, the claimant's WBA must be based upon a total of \$37,130.00.

We, therefore, conclude as a matter of law that, pursuant to the CARES Act, § 2102(d)(1)(A)(i), G.L. c. 151A, § 1(s)(a), and 20 C.F.R. § 625.6(a), the claimant's WBA shall be based upon both his gross wages and his net earnings from self-employment that involved the performance of services in 2019.

The review examiner's decision is reversed. The claimant's weekly benefit rate and total PUA benefits shall be calculated based upon \$37,130.00 for the 2019 calendar year.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 5, 2022



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.

BGM/rh