

**The claimant presented sufficient documentary evidence to verify her claimed gross wages and net income from self-employment in 2019, and the total amount of her earnings is sufficient to warrant a recalculation and increase to her weekly benefit amount from the minimum \$267.00.**

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

**Issue ID: N6-F84M-VTM9**

## **BOARD OF REVIEW DECISION**

### 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 an increase to the claimant's Pandemic Unemployment Assistance (PUA) weekly benefit amount. We review, pursuant to our authority under G.L. c. 151A, § 41 and we affirm in part and reverse in part.

The claimant filed a claim for PUA benefits with the DUA, effective March 8, 2020, which was approved in a Notice of Income Verification Determination issued on May 12, 2020. The claimant appealed the monetary determination to the DUA hearings department, as she was seeking an increase to her PUA weekly benefit amount based on her earnings in 2019. Following a hearing on the merits, the review examiner affirmed the agency's initial determination and denied the increase to the claimant's PUA benefits in a decision rendered on December 4, 2020. We accepted the claimant's application for review.

An increase to the claimant's weekly benefit amount was denied after the review examiner determined that, under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, the claimant was eligible for only the minimum weekly benefit amount, as she did not present sufficient evidence to verify that her earnings in 2019 were such that an increase to her benefits was warranted. 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 evidence pertaining to the claimant's total earnings in 2019. 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 that the claimant did not establish sufficient earnings in 2019 to increase her weekly benefit amount, is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant's earnings in 2019 totaled \$40,374.00.

### Findings of Fact

The review examiner's consolidated findings of fact 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 \$267.
3. In 2019, the claimant and her husband operated a real estate company.
4. In 2019, the claimant held 100% stock ownership in the real estate company she operated with her husband. The claimant earned \$24,144.00 in net self-employment income from the real estate company. The claimant has a 2019 Form K-1 reflecting this income.
5. In 2019, the claimant earned \$16,230.00 in W-2 wages from the real estate company she operated with her husband. The claimant has a 2019 Form W-2 reflecting this income.

#### 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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is not entitled to an increase of her PUA weekly benefit amount.

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>1</sup> The CARES Act specifies that a claimant's benefit rate under the PUA program is governed by 20 C.F.R. § 625.6, 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

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<sup>11</sup> Pub. L. 116-136 (Mar. 27,2020), § 2102.

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 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 . . . .

The CARES Act also incorporates applicable state law in determining a claimant's covered employment and wages. This includes 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 any self-employment for the 2019 calendar year.

After the initial hearing, the review examiner found that the claimant earned \$16,230.00 in gross wages in 2019, and she denied the claimant's request that her PUA weekly benefit amount be increased from the minimum amount of \$267.00. The review examiner based her decision on the claimant's failure to provide sufficient documentation to establish that her 2019 earnings were greater than \$27,768.00, which is the yearly compensation upon which the minimum weekly benefit amount of \$267.00 is based on in Massachusetts.<sup>2</sup> Only claimants who establish 2019 earnings greater than \$27,768.00 will be eligible for an increase to their weekly benefit amount.

After the hearing decision was issued, the claimant appealed to the Board of Review and submitted a copy of her 2019 Schedule K-1 (Form 1120-S) as proof of her additional earnings in 2019. We remanded this case to the review examiner to add this document to the exhibits in the record. After remand, the review examiner found that in addition to the \$16,230.00 in gross wages that the claimant earned in 2019, she earned \$24,144.00 in net self-employment income. These findings establish that the claimant has submitted sufficient evidence to verify her earnings of \$40,374.00 in the 2019 calendar year.

We, therefore, conclude as a matter of law that the claimant's PUA benefit entitlement should be calculated based on her 2019 earnings of \$40,374.00.

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<sup>2</sup> See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (April 27, 2020), p. I-4; UIPL No. 03-20 (Dec. 12, 2019).

The review examiner's decision is affirmed in part and reversed in part. The claimant is monetarily eligible for PUA benefits, but her weekly rate and total PUA benefits shall be calculated based upon her combined gross wages and net income from self-employment of \$40,374.00 for the 2019 calendar year.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 4, 2021**



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.

SVL/rh