

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

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

**Issue ID: N6-F84N-2F7P**

### 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 1, 2020, which was approved in a Notice of Income Verification Determination issued on July 14, 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 February 12, 2021. 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 earnings in 2019. 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 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 evidence in the record establishes that the claimant had earnings of \$194,966.00 in 2019.

### 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).
2. On July 14, 2020, the Department of Unemployment Assistance (DUA) issued a Notice of Income Verification Determination advising the claimant that the documents she had submitted were insufficient to verify her income for 2019.
3. Because no income was verified for the claimant, she was assigned a PUA benefit rate of \$267.00 per week.
4. The claimant filed her 2019 taxes. She had income that year from two Limited Liability Companies, both of which she is a member. They are taxed as partnerships. One of those companies is a short-term property rental company, while the other is a property cleaning company. In 2019, the claimant assisted her partner in managing both companies.
5. Schedule K1 of the claimant's 2019 tax return pertaining to the rental company shows net income of \$140,819.
6. Schedule K1 of the claimant's 2019 tax return pertaining to the cleaning company shows net income of \$51,170.
7. The claimant appealed the DUA determination of July 14, 2020.

#### Credibility Assessment:

The claimant provided clear and consistent testimony at both the original hearing and the remand hearing. Her testimony is deemed to be 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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We note that the income figures in Consolidated Findings of Fact ## 5 and 6 conflict with the underlying evidence in the record. The claimant's 2019 Schedules K-1 shows that she had ordinary business income of \$141,449.00 for one of her companies and \$53,517.00 for her other company.<sup>1</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

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<sup>1</sup> The ordinary business income for the claimant's companies, while not explicitly incorporated into the review examiner's findings, 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).

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 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>2</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 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.

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

In his original decision, the review examiner concluded that the claimant did not provide substantial and credible evidence of her earnings in 2019. Based on the information provided by the claimant in her appeal to the Board of Review, we remanded the case to give the claimant an opportunity to submit her 2019 Schedule K-1 (Form 1120-S) for each of her businesses. The tax forms provided by the claimant show that in 2019, she had ordinary business income of \$141,449.00 for one of her companies and \$53,517.00 for a second company. The above evidence provided by the claimant is sufficient to verify that her total net income from self-employment in the 2019 calendar year was \$194,966.00.

We, therefore, conclude as a matter of law that, the claimant's PUA benefit entitlement should be calculated based on her 2019 earnings of \$194,966.00.

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 net income from self-employment of \$194,966.00 for the 2019 calendar year.



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 5, 2021**



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.

SVL/rh