

**The claimant did not present sufficient evidence to verify his net income from self-employment for the 2019 calendar year. He is monetarily eligible for benefits based only on the minimum weekly benefit amount.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: N6-F84P-68J4**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) modifying the claimant's eligibility for Pandemic Unemployment Assistance (PUA benefits). We review pursuant to our authority under G.L. c. 151A, § 41, and we affirm.

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 July 20, 2020. The claimant appealed the monetary determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner modified the agency's initial determination, concluding the claimant was entitled to only the minimum weekly benefit amount, in a decision rendered on December 7, 2020. We accepted the claimant's application for review.

The minimum amount of weekly benefits were awarded based on the review examiner's determination that, although the claimant provided evidence of his gross income from self-employment, he did not present sufficient evidence to verify his net income from self-employment in 2019. After considering the recorded testimony and evidence from the hearing, the review examiner's original decision, and the claimant's appeal, we remanded the case to the review examiner to provide additional evidence showing his net income from self-employment. 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 original decision, which concluded that the claimant did not present sufficient evidence to verify his 2019 net income from self-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:

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 was self-employed as a driver and received no wages from W-2 employment.
4. In 2019, the claimant earned \$38,913.48 in gross self-employment earnings.
5. The claimant has not filed his 2019 income tax return.
6. The amount in net income which the claimant earned from his self-employment in 2019 is unknown.

#### Credibility Assessment:

The claimant provided three credible 2019 1099 tax forms from three separate companies. The 1099s show that the claimant earned \$30,822.42 from one company, \$2,423.25 from a second company and \$5,667.81 from a third company in the 2019 calendar year. Therefore, the claimant provided credible documentation to support a finding that he earned a total of \$38,913.48 in gross self-employment earnings in 2019.

There was no credible testimony or documentation provided during the hearing regarding the claimant's net self-employment income from 2019. When the claimant was asked about his expenses from 2019, the claimant appeared to be estimating or making guesses. At one point, he stated that one of his expenses was \$7,200 in rent. It is unclear how rent could be a valid expense for a self-employed driver. In addition, the claimant testified during the hearing that, although he had given all of his documents to someone to file his 2019 taxes, the person to whom he had given his documents had failed to do so. Therefore, it is unclear what he has reported to the federal and state governments regarding his net income. As such, no findings were made as to the claimant's net self-employment income for 2019.

#### 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. 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. Upon review of the entire record, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.

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 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 . . . .

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. *See* 20 C.F.R. § 625.6(a)(2).

The claimant was self-employed as a driver and provided tax documentation showing that he earned \$38,913.48 in gross wages for the 2019 calendar year. Consolidated Findings ## 3 and 4. However, the claimant had not yet filed his 2019 income tax returns and did not present documentary evidence of his business expenses during the 2019 calendar year. *See* Consolidated Findings ## 5 and 6. Since we cannot determine the claimant's net income from self-employment during that time period, he is only entitled to the minimum weekly benefit amount.

---

<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

We, therefore, conclude as a matter of law that the claimant's PUA benefit amount shall remain unchanged from the original determination. The review examiner's decision is affirmed.



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 12, 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.

LSW/rh