

**On remand, the claimant presented sufficient evidence to verify his 2019 net income from self-employment. His PUA benefits shall be calculated based on that amount.**

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

**Issue ID: N6-F8TJ-N3LF**

### 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 entitlement to Pandemic Unemployment Assistance (PUA benefits). 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 June 23, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on January 11, 2021, finding the claimant eligible for only the minimum weekly benefit amount. We accepted the claimant's application for review.

The minimum amount of weekly benefits was awarded based on the review examiner's decision 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 decision, and the claimant's appeal, we remanded the case to the review examiner to obtain additional tax documentation relevant to the claimant's appeal. 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 was only entitled to the minimum benefit amount because he did not present sufficient evidence to verify his 2019 net income, 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 April 5, 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 providing short-term rentals, both on his own and through a variety of short-term rental agencies.
4. The claimant received no earnings from W-2 employment in the 2019 calendar year.
5. The claimant earned \$76,014 in gross self-employment earnings providing short-term rentals in the 2019 calendar year.
6. The claimant had \$25,562 in business expenses in the 2019 calendar year, including mortgages on his properties, insurance, utilities and supplies, repairs and maintenance, and taxes and licenses.
7. The claimant earned \$50,452 in net self-employment earnings in the 2019 calendar year.

#### Credibility Assessment:

During the first hearing, the claimant offered for the record a 2019 1099-K tax form from one rental agency showing gross earnings of \$3,851.00. The claimant testified that he had received another 2019 1099 tax form from another rental agency and that it was incorrect. The claimant stated that he was in the process of amending his 2019 tax returns. The claimant then provided a 2019 1040-X, consisting of two pages, in which he reported gross self-employment earnings of \$76,014. The claimant did not provide a corrected 1099 tax form or a Schedule C.

During the remand hearing, the claimant provided credible testimony regarding his 2019 earnings and supported his testimony with documentary evidence. The claimant offered for the record his 2019 1040-X and his amended 2019 Schedule C. The Schedule C shows gross income of \$76,014 and \$50,452 in net self-employment earnings. Although the claimant did not provide the corrected 1099 tax form, the Schedule C is a credible source of the claimant's gross income. The claimant's testimony concerning his work and earnings in 2019 was consistent with his testimony from the first hearing. Taken together, the claimant's credible testimony and documents support a conclusion that his net earnings for 2019 amount to \$50,452, and, therefore, a finding of fact was made in that regard.

#### 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. Based upon these new consolidated findings, as discussed more fully below, we disagree with the review examiner's original legal conclusion that the claimant did not present sufficient evidence to verify his 2019 net income from self-employment.

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.

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

At the hearing, the claimant submitted sufficient tax documentation to verify his gross income, business expenses, and net income from self-employment in the 2019 calendar year. Consolidated Findings ## 5-7. This documentation shows that the claimant's net income from self-employment in 2019 totaled \$50,452. Consolidated Finding # 7.

We, therefore, conclude as a matter of law that the claimant's PUA benefit entitlement should be calculated based on his 2019 net income of \$50,452.

The review examiner's decision is affirmed in part and reversed in part. The claimant is monetarily eligible for PUA benefits, but his weekly rate and total PUA benefits shall be calculated based upon his net income from self-employment of \$50,452 for the 2019 calendar year.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 13, 2021**



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.

LSW/rh