

The claimant lawncare contractor established that he had income from working in Massachusetts during 2020 and that it was reduced due to the COVID-19 public health emergency. He is entitled to PUA benefits.

**Board of Review
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Issue ID: N6-FJV8-736N

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 1, 2020. The Department of Unemployment Assistance (DUA) determined the claimant was ineligible for benefits on November 19, 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 February 24, 2021. We accepted the claimant’s application for review.

The review examiner concluded that the claimant was ineligible for PUA benefits on the basis that the claimant failed to present sufficient evidence to verify receiving income from the performance of services in Massachusetts 2020. After considering the recorded testimony and evidence from the hearing, the review examiner’s decision, the documents produced with the claimant’s Board appeal (payment checks) and the claimant’s appeal, we remanded for additional evidence for the review examiner to consider the documents submitted with the claimant’s Board appeal. Because the consolidated findings after this remand did not address the reason for the claimant’s unemployment, it was necessary to remand a second time. The claimant attended both remand hearings. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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, a Maine resident, was ineligible for PUA benefits under a Massachusetts claim because he failed to prove that he was working as a landscaper in Massachusetts in 2020, 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) which was determined to be effective March 1, 2020.
2. The claimant lives in Maine and is a self-employed landscaper.
3. The claimant worked in Massachusetts from March 2020 until November 2020.
4. The claimant filed his 2019 and 2020 tax returns, including his Schedule C's.
5. The claimant has checks from April, May, June, July, August, and September 2020, received from his customers for work negotiated and done in 2020.
6. The majority of the claimant's customers' checks have the customers' Massachusetts addresses. The claimant has one check with the payor's address in Maine.
7. There are some names listed on the claimant's customer list that correspond to the names on the checks submitted by the claimant.
8. The claimant reports his income based on the date he receives the check and not for the date he completes the work if he gets the payment later.
9. During the week of April 5, 2020, through April 11, 2020, the claimant's gross income was \$135.00.
10. During the week April 12, 2020, through April 18, 2020, the claimant's gross income was \$965.00.
11. During the week of April 19, 2020, through April 25, 2020, the claimant's gross income was \$1,255.00.
12. During the week of April 26, 2020,,through May 2, 2020, the claimant's gross income was \$32.39.
13. During the week of May 3, 2020, through May 9, 2020, the claimant's gross income was \$1,355.00
14. During the week of May 17, 2020, through May 23, 2020, the claimant's gross income was \$60.00.
15. During the week of May 24, 2020, through May 30, 2020, the claimant's gross income was \$4,457.39.
16. During the week of May 31, 2020, through June 6, 2020, the claimant's gross income was \$2,520.00.

17. During the week of June 7, 2020, through June 13, 2020, the claimant's gross income was \$3,345.00.
18. During the week of July 5, 2020, through July 11, 2020, the claimant's gross income was \$2,007.60.
19. During the week of July 19, 2020, through July 25, 2020, the claimant's gross income was \$225.00.
20. During the week of July 26, 2020, through August 1, 2020, the claimant's gross income was \$300.00.
21. During the week of August 2, 2020, through August 8, 2020, the claimant's gross income was \$885.00.
22. During the week of August 16, 2020, through August 22, 2020, the claimant's gross income was \$800.00.
23. During the week of August 23, 2020, through August 29, 2020, the claimant's gross income was \$1,315.00.
24. During the week of August 30, 2020, through September 5, 2020, the claimant's gross income was \$500.00.
25. During the week of September 6, 2020, through September 12, 2020, the claimant's gross income was \$1,865.00.
26. During the week of September 13, 2020, through September 19, 2020, the claimant's gross income was \$540.00.
27. During the week of September 20, 2020, through September 26, 2020, the claimant's gross income was \$1,670.00.
28. During the week of September 27, 2020, through October 3, 2020, the claimant's gross income was \$880.00.
29. The claimant reports his net income from self-employment and not his gross income during his weekly certification, because the weekly certification form requests net self-employment income.
30. From the week beginning April 5, 2020, to the week ending May 16, 2020, the claimant did not report any income.
31. During the week of May 17, 2020, through May 23, 2020, the claimant reported \$287.00 in net income.

32. During the week of May 24, 2020 through May 30, 2020, the claimant did not report any income.
33. During the week of May 31, 2020, through June 6, 2020, the claimant reported \$261.00 as his net income.
34. During the week of June 7, 2020, through to June 13, 2020, the claimant reported \$261.00 as his net income.
35. During the week of July 5, 2020, through to July 11, 2020, the claimant reported \$105.00 as his net income.
36. During the week of July 19, through July 25, 2020, the claimant reported \$235.00 as his net income.
37. During the week of July 31, 2020, through to August 1, 2020, the claimant reported \$145.00 as his net income.
38. During the week of August 2, 2020, through to August 8, 2020, the claimant reported \$185.00 as his net income.
39. During the week of August 9, 2020, through August 15, 2020, the claimant reported \$195.00 as his net income.
40. During the week of August 16, 2020, through August 22, 2020, the claimant reported \$205.00 as his net income.
41. During the week of August 23, 2020, through August 29, 2020, the claimant reported \$160.00 as his net income.
42. During the week of August 30, 2020, through September 5, 2020, the claimant reported \$170.00 as his net income.
43. During the week of September 6, 2020, through September 12, 2020, the claimant reported \$165.00 as his net income.
44. During the week of September 13, 2020, through September 19, 2020, the claimant reported \$105.00 as his net income.
45. During the week of September 20, 2020, through September 26, 2020, the claimant reported \$205.00 as his net income.
46. During the week of September 27, 2020, through October 3, 2020, the claimant reported \$205.00 as his net income.
47. The claimant's landscaping business was reduced in 2020 as compared to 2019.

48. Between March 2020 and November 2020, the claimant's business was reduced because his customers who were staying home due to COVID-19 stay-at-home orders, were doing their own lawn care, such as raking their own leaves, doing their own bark mulch, and cutting their own lawns.

49. A comparison of the claimant's 2019 and 2020 Schedule C's show the financial reduction in the claimant's business between the two years.

Credibility Assessment:

During the initial remand hearing, the claimant credibly testified that he has an active landscaping business. In response to the Board of Review's question 2, findings of fact were made based on the total weekly gross income received by the claimant as shown by the dates on the checks. Question #3(a) also requested the claimant's gross weekly income. As this amount would be reflected in the findings which responded to Question #2, no separate findings of fact were made in response to Question #3(a).

In Question #3(b), the Board of Review requested findings of fact about the "gross weekly income" reported by the claimant on his weekly certification. However, this information would not be reflected in the weekly certifications, as the agency requests net self-employment income in the weekly certifications. During the initial remand hearing, the claimant testified that each week when he certified for benefits, where applicable, he would report his net income. Therefore, in response to Question # 3(b), findings of fact were made regarding the claimant's reported net income and not his gross income.

During the second remand hearing, the claimant credibly testified that in 2020, he worked in Massachusetts between March and November. The claimant's 2019 and 2020 tax documentation indicate that he worked in Massachusetts.

The claimant also testified that compared to 2019, his business was decreased in 2020 from March through November due to COVID-19. He testified that his customers who had to stay home due to the stay-at-home orders were doing their own lawn care. A comparison of the claimant's 2019 and 2020 claimant's tax documents shows the reduction in his business.

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 is ineligible for PUA benefits.

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 In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act. Among the criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is that an individual will be eligible for PUA benefits if he or she was a self-employed individual who experienced a significant diminution of his or her customary or usual services because of the COVID-19 public health emergency.² Further, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.³ Therefore, in order to be eligible for benefits, the claimant must show that he had work in Massachusetts that was negatively impacted by the COVID-19 pandemic.

In her decision, the review examiner concluded that the claimant did not show that he lost work in Massachusetts, because he did not present any client checks. These checks were submitted with the claimant's Board appeal and are now part of the record. After remand, the review examiner has found that: (1) the claimant did have 2020 Massachusetts work income from his lawncare business from March, 2020, until November, 2020; (2) his volume of business and earnings were reduced in 2020 as compared to 2019; and (3) this was due to his customers staying home due to COVID-19 stay-at-home orders and doing their own lawncare. *See Consolidated Findings of Fact ## 3 and 8 - 49.* These consolidated findings now show that the claimant had income from work performed in Massachusetts during 2020, and that he experienced a significant diminution of work due to the COVID-19 public health emergency.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he lost work in Massachusetts for a COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

The review examiner's decision is reversed. The claimant is eligible for PUA benefits as of the week beginning April 5, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 24, 2022



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

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

² *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 Change 6 (Sept. 3, 2021), Attachment I, pp. I3-I4.

³ *See* UIPL16-20, Change 1 (Apr. 27, 2020), Attachment I, B (7), p. I-3.

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

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