

The claimant's tax return verifies that his total earnings in 2019 were less than \$27,768.00. Consequently, his WBA shall not be increased from the minimum amount of \$267.00.

**Board of Review
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Issue ID: N6-FK6K-P9FJ

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 affirm.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020, which was approved in a Notice of Income Verification Determination issued on September 14, 2020. The claimant appealed the monetary determination to the DUA hearings department, as he was seeking an increase to his PUA weekly benefit amount based on his 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 14, 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 he did not present sufficient evidence to verify that his earnings in 2019 were such that an increase to his 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 make subsidiary findings from the record. 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 his 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 \$12,406.00.

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 15, 2020.

2. According to the claimant's 2019 tax filings, he was self-employed and received no earnings from W-2 employment.
3. The claimant has two 1099 forms which show he earned at [sic] total of \$51,077 in gross, self-employment earnings in the 2019 calendar year from driving jobs with two driving app companies.
4. According to the claimant's 2019 tax filings (Schedule C), he earned \$12,406 in net self-employment earnings in the 2019 calendar year.

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 set aside the portion of Finding of Fact # 3, which states that the claimant had gross earnings of \$51,077.00 from self-employment in the 2019 calendar year. The claimant's 2019 Schedule C shows that his gross receipts or sales for 2019 were in the amount of \$73,362.00.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant is not entitled to an increase of his 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.² 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 . . .

¹ The gross income section of the claimant's Schedule C, 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).

² Pub. L. 116-136 (Mar.27,2020), § 2102.

(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 did not earn any gross wages from W-2 employment in 2019, and he did not submit sufficient evidence to establish the amount of his net self-employment income that year. Because the claimant's 2019 net income could not be verified, the review examiner denied the claimant's request that his PUA weekly benefit amount be increased from the minimum amount of \$267.00. After reviewing the claimant's 2019 tax return, including his Schedule C, on remand, the review examiner found that the claimant had net self-employment income of \$12,406.00 in the 2019 calendar year. Since the minimum weekly benefit amount of \$267.00 in Massachusetts is based on a yearly compensation of \$27,768.00,³ only claimants who establish 2019 earnings greater than that amount will be eligible for an increase to their weekly benefit rate. Here, the tax documents submitted by the claimant verified that his total earnings in 2019 were only \$12,406.00 in net self-employment income. Based on these earnings, the claimant is not entitled to an increase to his weekly benefit rate.

We, therefore, conclude as a matter of law that the claimant's PUA benefit entitlement shall be set at the minimum weekly amount.

The review examiner's decision is affirmed. The claimant is monetarily eligible for PUA benefits, but his weekly rate for benefits shall be set at the minimum amount of \$267.00.

³ See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (April 27, 2020), p. I-4; and UIPL No. 03-20 (Dec. 12, 2019).

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 23, 2021



Charlene A. Stawicki, Esq.
Member



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

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