

**The claimant did not present her 2019 tax return during the original hearing and testified that she had filed for an extension. At the remand hearing, the claimant testified that she did, in fact, file her 2019 taxes in time but had forgotten that she had during the original hearing. The review examiner reasonably rejects all documents as not credible or authentic. The claimant is only entitled to the minimum PUA weekly benefit amount.**

**Board of Review  
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Chairman  
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Member  
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Member**

**Issue ID: N6-FTMH-JNKN**

## **BOARD OF REVIEW DECISION**

### 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 affirm.

The claimant filed a claim for PUA benefits with the DUA, effective February 23, 2020, which was approved at a weekly benefit amount of \$267 in determination issued on December 22, 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, concluding that the claimant was not entitled to an increased weekly benefit amount in a decision rendered on January 26, 2021. We accepted the claimant's application for review.

The review examiner determined that the claimant was not eligible for an increased PUA weekly benefit amount, as she did not present tax documentation showing her net income from 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 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 provided no verifiable document to support her 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 February 23, 2020.
2. The Department of Unemployment Assistance (DUA) determined the claimant's weekly benefit amount (WBA) to be \$267.
3. The claimant has no authentic documentation showing what she earned for income in 2019.

#### Credibility Assessment:

The claimant provided a copy of a 2019 federal income tax return. The authenticity of the tax return is questionable. The claimant gave conflicting answers during the two hearings regarding when she filed the tax return. During the initial hearing, the claimant testified that she had not yet filed her 2019 income tax return. When the claimant was asked the same question during the remand hearing, she testified that she had filed her return during the usual tax return filing period but could not remember the exact date. When the claimant was asked why she had testified during the original hearing that she had not filed her tax return, she state[d] that she had forgotten that she had already filed the return. The claimant also testified that she had not filed a Massachusetts resident tax return for 2019 because she was unable to afford it at the time she filed the federal return. However, this does not account for her failure to file a state tax return in the time that has since elapsed. Further, the tax return provided by the claimant is undated and unsigned. Given the above discussion, the tax return provided by the claimant cannot be considered authentic or credible documentation of the claimant's gross or net income from self-employment for 2019. As such, no findings were made as to the claimant's gross or 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. 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 agree with the review examiner's legal conclusion that the claimant has not verified her 2019 self-employment net income and that the claimant's weekly benefit amount will not be increased.

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. The CARES Act, § 2102(d)(1)(A)(i), 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 paragraph (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 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-employed 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 that was dependent upon the performance of service by the individual. . . .

Thus, in accordance with applicable state law and 20 C.F.R. § 625.6(a)(2), 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.

With the appeal to the Board of Review, the claimant submitted her 2019 tax return, including the Schedule C tax form, which the claimant asserted that she prepared herself. The Schedule C form contains information about profit from business and indicates her 2019 net income from business is \$30,375.

Pursuant to the Board's remand order, the review examiner entered the tax documents into the record as Remand Exhibit 5. The review examiner rejected Remand Exhibit 5 as not authentic or credible. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). "The test is whether the finding is supported by "substantial evidence." *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted).

The claimant did not present her 2019 tax return during the original hearing and testified that she had filed for an extension. As noted in the credibility assessment, the claimant testified at the remand hearing that she did, in fact, file her 2019 taxes in time but had forgotten that she had during the original hearing. Given the claimant's inconsistent explanations about whether and when she filed her 2019 tax return, we believe the review examiner's negative credibility assessment is reasonable in relation to the evidence presented.

Because the documentary evidence presented has reasonably been determined not to be a credible verification of the claimant's 2019 net income, we agree with the review examiner's legal conclusion that the claimant has failed to produce substantial evidence demonstrating that she is entitled to more than the minimum weekly benefit amount.

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 eligible for PUA benefits at the minimum weekly benefit rate, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 4, 2021**



Paul T. Fitzgerald, Esq.  
Chairman



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.

KB/ rh