

The claimant presented documentary evidence verifying that he was self-employed in 2019, the applicable tax year for his PUA claim. Therefore, he presented sufficient evidence to substantiate employment within the meaning of the Continued Assistance Act and is eligible for continued PUA benefits.

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

Issue ID: N6-H54F-T7P5

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 29, 2020, which was initially approved. However, in a determination issued on May 11, 2021, the DUA denied benefits beginning December 27, 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 and denied PUA benefits in a decision rendered on February 1, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to meet the eligibility requirement to substantiate employment, self-employment, or planned commencement of employment or self-employment, and, thus, the claimant was not eligible for continued PUA benefits. 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 employment status in 2019. 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 did not meet his burden to substantiate employment or self-employment because he failed to provide sufficient documentation from the relevant period of time, 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 PUA benefits, with an effective date of March 29, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. In 2019, the claimant worked as a short-term rental host.
3. The claimant provided a 2019 1099-K tax document showing gross earnings of \$57,394.77 that year.
4. On May 11, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing the claimant that he was not eligible to receive benefits beginning the week ending January 2, 2021.
5. The claimant appealed the DUA's determination.

Credibility Assessment:

At the original hearing, the claimant did not provide documentation establishing his work in 2019 or 2020. The record was held open for the claimant to provide such documentation, but it was not received by the review examiner prior to issuing the decision, despite evidence presented at the remand hearing that the documentation was sent to the agency.

In the remand hearing, the documents were entered and considered, and they appear to be authentic. Further, the claimant credibly testified that he has worked as a short-term rental host since 2019. The claimant's testimony is supported by a 2019 1099-K tax form he provided which shows his gross earnings for that year.

Overall, the claimant's testimony and supporting documentation are deemed credible.

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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to meet the eligibility requirement to substantiate employment or 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.¹ Pursuant to the Continued Assistance for Unemployed Workers Act (Continued Assistance Act), any claimant who files a new application for PUA benefits on or after January 31, 2021, or any claimant who receives a payment of PUA benefits on or after December 27, 2020, is required to provide documentation substantiating employment, self-employment, or planned commencement of employment or self-employment² at some point between the start of the applicable tax year and the effective date of claim.³ There is no requirement that such documentation relate to work the claimant lost because of COVID-19.

The claimant filed for PUA benefits on May 15, 2020, effective March 29, 2020. Therefore, he was required to present documentation to substantiate employment, self-employment, or planned commencement of employment or self-employment at some time between January 1, 2019, and March 29, 2020.

On remand, the hearing officer found that the claimant worked as a short-term rental host in 2019. *See Consolidated Finding # 2.* The claimant presented documentary evidence verifying that he had gross earnings of \$57,394.77 that year, and this is now reflected in the review examiner's consolidated findings. *See Consolidated Finding # 3.* This satisfies the claimant's burden to substantiate his employment during the relevant period.

We, therefore, conclude as a matter of law that the claimant met the eligibility requirement to substantiate employment or self-employment within the meaning of the Continued Assistance Act.

The review examiner's decision is reversed. The claimant is entitled to continue receiving PUA benefits for the week beginning December 27, 2020, and for subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 18, 2023



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)**

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

² Pub. L. 116-260 (Dec. 27, 2020), § 241.

³ *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), 4(b), p. 5, and Attachment I, C(2)(b), p. I-11.

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.

JCT/rh