

The claimant presented documentary evidence verifying that he performed work 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-H54J-MKJP

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 15, 2020, which was initially approved. However, in a determination issued on June 25 2021, the DUA denied benefits beginning the week ending January 2, 2021. 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 July 5, 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 requirements to substantiate employment, self-employment, or planned commencement of employment or self-employment, and, thus, the claimant was not eligible for 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 substantial and credible documentation showing he worked or was going to be working in Massachusetts in 2019 or 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) benefits, with an effective date of March 15, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. The claimant worked part-time as a driver for an auto shop from early 2018 until March 2019.
3. The claimant worked approximately four (4) hours per day, from 7:00 a.m. to 11:00 a.m. and earned between \$15.00 and \$17.00 an hour.
4. The claimant provided copies of his 2019 tax returns showing he earned \$2,200.00 in wages that year.
5. The claimant was not employed in 2020.
6. The claimant provided copies of his 2020 tax returns showing that he did not earn any wages that year. The claimant's only reported income in 2020 on the federal and state tax returns is unemployment compensation.
7. On June 25, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits beginning the week ending January 2, 2021.
8. The claimant timely appealed the June 25, 2021, Notice of Non-Monetary Issue Determination.

Credibility Assessment:

The claimant's testimony and his documentation are deemed to be credible. Furthermore, the claimant's testimony is corroborated by his 2019 federal and state tax returns, which he presented prior to his remand hearing.

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.

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 the 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 12, 2020, effective March 15, 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 15, 2020.

The claimant presented documentary evidence verifying that he worked part-time for an auto shop in 2019, and this is now reflected in the review examiner's consolidated findings. *See Consolidated Findings ## 2-4.* This satisfies the claimant's burden to substantiate his employment during a portion of 2019, the applicable tax year.⁴

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 beginning the week ending January 2, 2021, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 31, 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

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

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

³ 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.

⁴ It also bears noting that the review examiner stated on the record that the claimant's 2019 wages were verified through the DUA's electronic record-keeping system for regular unemployment benefits, UI Online.

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.

JCT/rh