

The review examiner improperly concluded that the claimant failed to substantiate employment during the relevant period because he did not have any Massachusetts work in 2020. The claimant may meet the documentation requirement of the Continued Assistance Act, with proof of employment at some point between the start of the applicable tax year and the date the claimant filed for benefits. The claimant's documentation showing that he operated a restaurant in Massachusetts until he sold it in May, 2019 is sufficient to substantiate employment or self-employment during the period between January 1, 2019, the beginning of the applicable tax year, and June 6, 2020, the effective date that he filed for benefits.

Board of Review
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Issue ID: N6-H54M-P2LL

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 denied in a determination issued on June 8, 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 October 4, 2021. 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. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

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 any documentation showing he worked or was going to be working 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 findings of fact 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. The claimant has no documentation showing that he performed services in Massachusetts in 2020.
3. The claimant has no documentation showing he was offered employment in Massachusetts in 2020.
4. On June 8, 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.
5. The claimant appealed the DUA's determination.

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 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 findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to meet the eligibility requirements 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 date the claimant filed for benefits. *See* U.S. Department of Labor (DOL) 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. There is no requirement that such documentation relate to work the claimant lost because of COVID-19.

A review of the DUA's electronic record-keeping system, FastUI, shows that the claimant applied for PUA benefits on June 6, 2020. Therefore, pursuant to the applicable provisions of the Continued Assistance Act, the claimant was required to substantiate employment, self-employment or planned commencement of employment or self-employment at some time between January 1, 2019, and June 6, 2020. The review examiner erred in considering only documentary evidence relevant to the claimant's employment status during the 2020 calendar year.

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


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

At the hearing, the claimant testified that he owned and operated a restaurant in Massachusetts until he sold it in May, 2019.³ The claimant also provided a proof of sale dated May 30, 2019, listing the claimant as the president of the restaurant, and the business entity summary screen from the Secretary of the Commonwealth listing the claimant as the sole owner of the restaurant. These documents, which were admitted into evidence as Exhibits 4 and 5, are sufficient to substantiate the claimant's self-employment as the owner and operator of a restaurant 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 receive PUA benefits for the week beginning January 2, 2021, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 6, 2022



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

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.

LSW/rh

³ The claimant's testimony in this regard 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).

⁴ Exhibits 4 and 5 are also part of the unchallenged evidence introduced at the hearing and placed in the record.