

The claimant provided an IRS tax summary of his prior work as a musician. This satisfies the requirement to substantiate employment under the Continued Assistance Act, and he is eligible for further PUA benefits.

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

Issue ID: N6-H54N-6J3F

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 14, 2020, and was initially approved. However, on May 27, 2021, the DUA sent the claimant an employment substantiation determination, informing him that he was not eligible to receive PUA benefits as of 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 determination in a decision rendered on March 7, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to provide documentation substantiating employment, self-employment, or the planned commencement of employment or self-employment, as required by § 241 of the Continued Assistance Act.¹ 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 for additional evidence to consider employment documents submitted with the claimant's appeal to the Board. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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 was ineligible for PUA benefits starting week ending January 2, 2021, because he failed to present documentation of work prior to the effective date of his claim, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

¹ Continued Assistance for Unemployed Workers Act of 2020, Division N, Title II, Subtitle A of the Consolidated Appropriations Act, 2021 (Dec. 27, 2020).

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.
2. The Department of Unemployment Assistance (DUA) determined that the claimant has a weekly benefit amount of \$267.00.
3. The claimant was a self-employed musician and music instructor during the years of 2019 and 2020. The majority of his services included performing and providing music lessons.
4. In March 2020, he received communication that his services would be discontinued due to the COVID-19 emergency.
5. The claimant performed and provided music lessons at various facilities, which were mandated to shut down due to the COVID-19 restrictions.
6. Due to the facilities' closures, the claimant was unable to continue providing services.
7. The claimant was residing in Massachusetts when he applied for PUA benefits.
8. The DUA issued a disqualifying determination to the claimant on May 27, 2021.
9. The claimant appealed the determination.

Credibility Assessment:

The claimant produced documentation which indicated earnings received from his self-employment during the years of 2019 and 2020. The claimant testified that he was initially unaware that on the IRS website an individual could request their 2019 tax return transcript. He later discovered this option. The claimant was able to produce his 2019 tax return transcript which detailed his earnings of that year. The documentation included details of when the IRS received his 2019 tax return, payment of taxes, and when it was processed. Consideration was given to the claimant's testimony that he received communication that his services would be discontinued due to the COVID-19 emergency. The claimant performed and provided music lessons at facilities which were mandated to shut down due to the COVID-19 restrictions. He provided documentation from event organizers informing him of the canceled events. Due to the facilities closure, the claimant was unable to perform. The claimant has offered both credible testimony and documentation confirming his self-employment during the years of 2019 and 2020, and loss of earnings due to the COVID-19 emergency.

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 reverse the review examiner's legal conclusion that the claimant is ineligible for further PUA benefits.

The claimant in this case seeks PUA benefits, an 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 In December, 2020, Congress added an additional requirement for individuals to continue receiving PUA benefits. Individuals who applied for PUA benefits on or after January 31, 2021, and received a payment of PUA on or after December 27, 2020, must provide documentation substantiating employment, self-employment, or the planned commencement of employment or self-employment.³ The documentation must establish proof of employment, self-employment, or the planned commencement of employment or self-employment at some point between the start of the applicable tax year and the PUA claim effective date.⁴ It is intended to show a recent attachment to the labor force and to prevent fraud.⁵ There is no requirement that such documentation relate to work the claimant lost because of COVID-19, or that such work be located in any particular state.

Here, the claimant asserted that he had been self-employed. Proof of self-employment includes, but is not limited to, state or federal employer identification numbers, business licenses, tax returns, business receipts, and signed affidavits from persons verifying the individual's self-employment.⁶ The claimant's effective date is March 14, 2020. Therefore, he must show proof of self-employment or planned commencement of self-employment at some point between January 1, 2019, and March 14, 2020.

After remand and considering the IRS Tax Summary, which the claimant submitted with his Board appeal, the review examiner found that the claimant was self-employed as a music instructor in 2019. *See Consolidated Finding # 3.* This is substantial and credible evidence of his self-employment as a music instructor during the required period.

We, therefore, conclude as a matter of law that the claimant has met his burden to present documentary evidence substantiating self-employment as required by the Continued Assistance Act, § 241.

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

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

⁴ *See* UIPL 16-20, Change 4, Attachment I, C(1), p. I-4.

⁵ *See* UIPL 16-20, Change 4, Attachment I, C(2), p. I-10.

⁶ *See* UIPL 16-20, Change 4, Attachment I, C(1), p. I-10.

The review examiner's decision is reversed. The claimant is eligible for PUA benefits beginning the week ending January 2, 2021, and for subsequent weeks, if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 28, 2024



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.

BGM/rh