

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-H54P-6FHM

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 22, 2020, which was initially approved. However, in a determination issued on May 18, 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 January 7, 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 and 2020. 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 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 22, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. At some point between January 1, 2019 and March 22, 2020, the claimant was self-employed.
3. Prior to filing his claim for benefits, the claimant was operating a limited liability company (LLC) retail business (the business) with his wife. The nature of the business was to purchase products from brick-and-mortar stores in Massachusetts, then re-sell them online.
4. The business was formed in Wyoming on or about April 10, 2018, using an incorporating specialist as the named organizer solely for the purpose of forming the business. On April 10, 2018, once the business was formed, the incorporating specialist tendered a written resignation naming the claimant the new manager of the business.
5. On April 10, 2018, the administrative assistant to the incorporating specialist issued the claimant a letter about the business.
6. On April 10, 2018, the Internal Revenue Service (IRS) issued a letter addressed to the business, naming the claimant. The IRS letter assigned the business an Employer Identification Number.
7. The claimant has a membership certificate for the business. The claimant has a 50% membership interest in the business.
8. The claimant was operating this business in 2019.
9. The claimant has a 2019 Payment Card and Third Party Network Transactions form from an online company showing the business received \$26,433.70 in gross payments that year.
10. In 2019, the claimant was also working as a sales representative for a healthcare services company, paid on a commission basis.
11. The claimant has 2019 commission statements from the healthcare services company for January (\$41.80), February (\$57.85), October (\$61.16), and December (\$19.80). The claimant has 2020 commission statements from the healthcare services company for months after the effective date of the PUA claim.
12. On or about September 3, 2020, the claimant, through a tax preparer, filed 2019 federal and Massachusetts state tax returns.

13. The claimant has a 2020 schedule C reporting \$398 gross receipts or sales from the health care services company.
14. On or about May 14, 2021, the claimant, through a tax preparer, filed 2020 federal and Massachusetts state tax returns.
15. The claimant cared for his mother and this was unpaid. The claimant did not perform work for anyone else between January 1, 2019 and March 22, 2020.
16. On May 18, 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.
17. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant's evidence was credible about operating the business in 2019. The claimant's [sic] presented contemporaneous documentation of the initial formation of the business in 2018. Specifically, the April 10, 2018 letter from the incorporating specialist naming the claimant as the new manager for the business, the membership certificate showing when the business was formed and the claimant's membership interest, as well as the IRS letter to the business naming the claimant, demonstrate the claimant's affiliation with the business. The claimant also presented the 2019 Payment Card and Third Party Network Transactions form for the business showing gross receipts of \$26,433.70 for the year, corroborating his testimony about this self-employment. The claimant's testimony was also credible about working in 2019 as a sales representative for a healthcare services company because it was corroborated by the claimant's commission statements based on his sales for February, October, and December 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. 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 19, 2020, effective March 22, 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 22, 2020.

On remand, the review examiner found that the claimant was self-employed at some point between January 1, 2019, and March 22, 2020. *See Consolidated Finding # 2.* The claimant presented documentary evidence verifying that he had an e-commerce business and worked as a sales representative for a healthcare services company in 2019, and this is now reflected in the review examiner's consolidated findings. *See Consolidated Findings ## 9–11.* 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 - August 11, 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 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