

The claimant provided documentary evidence that he was self-employed between January 1, 2019, and March 15, 2020, his claim effective date, thereby satisfying the Continued Assistance Act requirement to show a recent attachment to the labor force. He is therefore entitled to further PUA benefits.

**Board of Review
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Issue ID: N6-H54P-MKK7

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. On May 13, 2021, the DUA sent the claimant a 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 initial determination in a decision rendered on October 31, 2021. 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 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 was ineligible for PUA benefits beginning January 2, 2021, because he failed to present documentation of work in 2020 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

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 15, 2020.

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

2. The claimant filed the PUA claim using a Massachusetts address.
3. Prior to filing his PUA claim, the claimant was a self-employed driver performing snow plowing and trash removal work.
4. In 2019, the claimant worked and submitted his 2019 federal and state tax returns including a Schedule C. The Schedule C shows gross revenue of \$10,790 and net earnings of \$9,913.
5. The claimant did not work in 2020.
6. The claimant hurt his arm in 2020 but did not provide and medical documentation.
7. The claimant submitted his 2020 federal and state tax returns showing the only income received as being unemployment.
8. The claimant submitted a letter dated June 20, 2021 from his tax preparer.
9. The claimant submitted a job search log for the week beginning June 13, 2021.
10. The claimant was able and available to work throughout 2020 and but did not work.
11. On May 13, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits.
12. 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. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for 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 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

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

self-employment.³ The documentation must establish that one of these forms of employment occurred at some point between the start of the applicable tax year and the PUA claim filing or effective date.⁴ It is intended to show a recent attachment to the labor force and to prevent fraud.⁵

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 15, 2020. Therefore, he may show proof of self-employment or planned commencement of self-employment at some point between January 1, 2019, and March 15, 2020.

In support of his asserting that he had earnings from self-employment as a snow and trash remover in 2019, the claimant produced his 2019 Form 1040 which included a Schedule C reflecting net earnings of \$9,913.00. *See* Finding of Fact # 4. The 2019 Schedule C identifies the claimant's business as snow removal, and he also testified to this in the hearing.⁷ Nothing in the review examiner's decision indicates that he questioned the authenticity of this tax return or the credibility of the claimant's testimony. Presumably based upon this evidence, he found that the claimant worked in 2019. *See* Finding of Fact # 4.

The 2019 Form 1040 and Schedule C thus satisfy the claimant's burden to present documentation showing that he worked within the time between the start of the prior tax year and his claim effective date.

We, therefore, conclude as a matter of law that the claimant met the eligibility requirements to substantiate self-employment as required by the Continued Assistance Act, § 241.

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

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 17, 2022



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

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.

⁷ While the Schedule C and the claimant's testimony were not explicitly incorporated into the review examiner's decision, they are part of the unchallenged evidence introduced at the appeal hearing and placed in the record and, 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).

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