

The claimant presented documentary evidence verifying that she performed work in Massachusetts in 2019, the applicable tax year for her PUA claim. Therefore, she 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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Issue ID: N6-H54R-J8MP

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 February 9, 2020, which was initially approved. However, in a determination issued on July 6, 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 11, 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 the planned commencement of employment or self-employment, and, thus, the claimant was not eligible for further 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 her burden to substantiate employment or self-employment because she failed to provide any documentation showing she 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 February 9, 2020.
2. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week.
3. The claimant operated a home cleaning business ([Business A]) from 2011 until January 2019 when she had to stop working due to a medical condition requiring surgery.
4. The claimant also worked as a contractor for a real estate staging company ([Business B]) from March 23, 2019 – August 6, 2019, when she again had to stop working due to her medical condition which required additional surgery.
5. The claimant was paid a flat rate which was negotiated by staging project. Payments were made by check for each project.
6. The claimant earned \$2,685.16 in 2019 for this work.
7. The claimant did not receive a 1099 from the employer.
8. The claimant filed a 2019 tax return but did not report her earnings which she believed were under the amount required to report.
9. The claimant had no other work in the period from January 1, 2019 – February 9, 2020.
10. On July 6, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive benefits beginning the week ending January 2, 2021.
11. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant submitted 8 checks issued to her by [Business B] for the period of March 23, 2019 – August 6, 2019, which corroborate her testimony which is found to be authentic and credible.

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),² 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 the planned commencement of employment or self-employment 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 performed in the filing state.

The claimant filed for PUA benefits on May 25, 2020, effective February 9, 2020. Therefore, she 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 February 9, 2020.

The claimant presented documentary evidence verifying that she worked as a contractor for a real estate staging company in 2019, and this is now reflected in the review examiner's consolidated findings. *See Consolidated Findings ## 4 and 6.* This satisfies the claimant's burden to substantiate her employment during a portion of 2019, the applicable tax year.

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.

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

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

³ *See* 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.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 21, 2022



Charlene A. Stawicki, Esq.
Member



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.

JCT/rh