

**On remand, the claimant presented additional documentary evidence verifying that she was self-employed and that she performed work and received earnings in 2019 and 2020. Therefore, the claimant has met her burden to substantiate employment within the meaning of the Continued Assistance Act, and she 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-H54R-N5FJ**

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, and was initially approved. However, in a determination issued on May 12, 2021, she was disqualified. The claimant appealed the disqualifying 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 13, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to meet the eligibility requirement to substantiate employment, self-employment, or planned commencement of either. 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 the purpose of taking additional evidence regarding her self-employment earnings. 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 provide substantial and credible evidence and testimony to substantiate her self-employment as a horseback instructor and trainer, 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 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 horse trainer during the years of 2019 and 2020. The majority of her services included providing horse riding lessons.
4. In March 2020, she received communication that her services would be discontinued due to the [COVID]-19 emergency.
5. The claimant provided horse riding lessons at a facility, which was mandated to shut down due to the [COVID]-19 restrictions.
6. Due to the facility's closure, the claimant was unable to continue horse training services.
7. The claimant was residing in a Massachusetts when she applied for PUA benefits.
8. The DUA issued a disqualifying determination to the claimant on May 13, 2021.
9. The claimant appealed the determination.

#### Credibility Assessment:

The claimant produced documentation which indicated earnings received from her self-employment during the years of 2019 and 2020. The online payment platform that the claimant utilizes has the ability to produce an excel sheet, which details each payment received. The claimant testified that she was initially unaware that the platform provided such service. She later discovered this option. The claimant was able to produce an excel sheet which detailed payments received within the years of 2019 and 2020. The documentation included details of the date payment was received, transaction number, amount received, and the identity of the individual who received payment. Consideration was given to the claimant's testimony that she received communication that her services would be discontinued due to the [COVID]-19 emergency. The claimant provided horse riding lessons at a facility, which was mandated to shut down due to the [COVID]-19 restrictions. She provided documentation from the facility informing staff and customers of its closure. Due to the facility's closure, the claimant was unable to continue horse training services. The claimant has offered both credible testimony and documentation confirming her 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 disagree with the review examiner's legal conclusion that that the claimant did not provide substantial documentary evidence to substantiate her self-employment.

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.<sup>1</sup> 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 self-employment.<sup>2</sup> 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.<sup>3</sup> It is intended to show a recent attachment to the labor force and to prevent fraud.<sup>4 5</sup>

Here, the claimant asserted that she was self-employed as a horseback trainer and riding instructor. Consolidated Finding # 3. The claimant filed for PUA benefits effective March 15, 2020. Therefore, 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 March 15, 2020.<sup>6</sup>

In her decision, the review examiner deemed the claimant's testimony that she was a self-employed horseback trainer and riding instructor in 2019 and 2020 not credible because the claimant failed to provide documentation to substantiate her earnings received from her self-employment. The review examiner further stated that although the claimant provided her 2019 and 2020 tax returns, it was insufficient because it was not supplemented by business receipts, bank statements, or other credible documentation showing earnings received. We remanded to afford the claimant an opportunity to produce such additional evidence.

Based upon additional documents presented during the remand hearing, including excel spreadsheets showing Venmo transactions of her work as a horse trainer and instructor, the review examiner has now found that the claimant provided horse training and riding services in 2019 and

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>2</sup> See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), 4(b)(ii), p. 5.

<sup>3</sup> See UIPL 16-20, Change 4, Attachment I, C(1), p. I-4.

<sup>4</sup> See UIPL 16-20, Change 4, Attachment I, C(2), p. I-10.

<sup>5</sup> See UIPL 16-20, Change 4, Attachment I, C(1), p. I-10.

<sup>6</sup> The Board acknowledges the ambiguity in the U.S. Department of Labor's interpretation of the period which one must substantiate employment or self-employment. Though the period is defined, "as some point between the applicable taxable year and the date of filing," the examples which follow show the Department's intention that the period to substantiate one's employment is between the applicable tax year and the claimant's effective date. In effect, the claimant must show a connection to the labor force before he or she became unemployed. See UIPL 16-20, Change 4, Attachment I, C(2)(b), p. I-11.

2020. Consolidated Finding # 3. This satisfies her burden to substantiate her self-employment during the relevant period.

We, therefore, conclude as a matter of law that the claimant met the eligibility requirements 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.



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 29, 2022**



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](http://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.

TCF/th