

The claimant provided substantial and credible documentation verifying her self-employment as a food vendor and as a part-time teacher in 2019. Held that the claimant met her burden to substantiate that she worked during the relevant period, as required by the Continued Assistance Act, and she is eligible for continued PUA benefits.

**Board of Review
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Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: N6-H553-N78N

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 8, 2020, which was initially approved. However, in a determination issued on August 3, 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 March 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 requirement 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 self-employment 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 sufficient documentation of her self-employment as a food vendor in 2019, 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 8, 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 contracted vendor and part-time teacher during the year of 2019.
4. In March 2020, the claimant's work as a part-time teacher was put on hold due to [COVID]-19 restrictions and school closures.
5. In the spring, summer, and fall of 2020 the claimant's contracted services as a vendor were canceled due to [COVID]-19 restrictions of large gatherings.
6. Due to the [COVID]-19 restrictions and closures, the claimant was no longer receiving earnings.
7. The claimant was residing in Massachusetts when she applied for PUA benefits.
8. The DUA issued a disqualifying determination to the claimant on August 3, 2021.
9. The claimant appealed the determination.

Credibility Assessment:

The claimant produced documentation which indicated earnings received from her contracted work as vendor and part-time teacher during the year of 2019. During the months of June, July, August, and September of 2019, the claimant received cash from her contracted work as a vendor at local festivals, which she deposited into her checking account. The claimant provided documentation and testimony identifying specific deposits from her vendor services. The claimant testified that she was initially unaware that she could submit her bank statements showing proof of earnings to DUA.

The claimant produced a 2019 1099 MISC of earnings received as a contracted part-time teacher at a local school, during the spring of that year. She also produced a 2019 1040 tax return. The claimant testified that the cash deposits and 2019 1099 MISC, were reflected in the earnings reported within the 2019 1040 Schedule C.

Consideration was given to the claimant's testimony regarding her contracted vendor services, and work as a part-time teacher were canceled due to the [COVID]-19 emergency. The claimant testified that due to [COVID]-19 restrictions, the festivals were unable to operate and school facilities were closed.

The claimant has offered both credible testimony and documentation confirming her contracted employment as a vendor and part-time teacher during the year of 2019, 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. 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.

In this case, the effective date of the claim is March 8, 2020. *See* Consolidated Finding # 1. Therefore, the claimant was required to present documentation to substantiate employment, self-employment, or the planned commencement of employment or self-employment at some time during the period of January 1, 2019, through March 8, 2020.

On remand, the claimant presented documentation verifying her self-employment as a contract vendor and part-time teacher in 2019 that the review examiner determined to be credible. This is now reflected in the review examiner's consolidated findings. *See* Consolidated Finding # 3. This satisfies the claimant's burden to substantiate her employment or self-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 as required by the Continued Assistance Act.

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.

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 - March 28, 2024



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.

REB/rh