

**On remand, the claimant provided substantial and credible documentation of her self-employment as a nail technician and esthetician in 2019. Held that the claimant met her burden to substantiate self-employment under 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-H558-2259**

### 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 July 29, 2021, she was disqualified from receiving further PUA 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 determination and denied further PUA benefits in a decision rendered on April 6, 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 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 information about 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 substantiate employment or self-employment because she had failed to provide substantial and credible documentation of self-employment as a nail technician and esthetician in 2019 or prior to the effective date of her claim in 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 March 22, 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 nail technician and esthetician [during] the years of 2019 and 2020. The majority of her services included nail and skin care.
4. In March 2020, she received communication that the facilities where she performed her services would be shut down due to [COVID]-19 restrictions.
5. Due to the facilities' closures, the claimant was unable to continue providing services.
6. The claimant was residing in Massachusetts when she applied for PUA benefits.
7. The DUA issued a disqualifying determination to the claimant on July 29, 2021.
8. The claimant appealed the determination.

#### Credibility Assessment:

The claimant produced documentation which indicated earnings received from her employment as a nail technician and esthetician during the year of 2019. The claimant testified that she was initially confused regarding DUA's request for her tax returns. She erroneously believed that the 1099s were the 1040 tax returns. During the remand hearing, the claimant was informed by the review examiner that the 1099 was not considered a 1040 tax return. The review examiner granted additional time for the claimant to provide the 2019 1040 tax return she had in her possession, as well as a 2019 tax return transcript. The claimant timely submitted both items to DUA.<sup>1</sup> The claimant was able to produce her 2019 tax return transcript which detailed her earnings of that year. The documentation included details of when the IRS received her 2019 tax return, payment of taxes, 1099s received, and when it was processed. Consideration was given to the claimant's testimony of the services she performed as a nail technician and esthetician at the various facilities, which were closed due to the [COVID]-19 emergency. Due to the facilities closure, the claimant was unable to provide her services. The claimant has offered both credible testimony and documentation confirming her employment as nail technician and esthetician during the year of 2019, and loss of earnings due to the [COVID]-19 emergency.

#### Ruling of the Board

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<sup>1</sup> For some reason, the review examiner neglected to enter these documents into the record.

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 initial legal conclusion that the claimant did not substantiate her self-employment.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under § 2102 of the CARES Act of 2020 and administered by the U.S. Secretary of Labor.<sup>2</sup> In December, 2020, Congress added an additional requirement for individuals to continue receiving PUA benefits. Pursuant to the Continued Assistance for Unemployed Workers Act (Continued Assistance Act), individuals who applied for PUA benefits and received a payment of PUA on or after December 27, 2020, had to provide documentation substantiating employment, self-employment, or the planned commencement of employment or self-employment.<sup>3</sup> The documentation had to 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>4</sup> It was intended to show a recent attachment to the labor force and to prevent fraud.<sup>5</sup>

In this case, the claimant had to substantiate employment or self-employment during the period of January 1, 2019, to March 22, 2020. *See* Consolidated Finding # 1. During the original hearing, the claimant testified that she worked as a nail technician in 2019 and 2020. However, she did not provide any documentation of her employment or self-employment from 2019, and her documentation for the year 2020 did not establish that she had worked prior to March 22, 2020.

On remand, the claimant submitted four 2019 Forms 1099 documenting the non-employee compensation she received that year. *See* Remand Exhibits 4 and 5. As referenced in the credibility assessment, the claimant subsequently submitted photographic images of nine pages from her 2019 income tax returns, an IRS transcript of her 2019 federal income tax return, and an IRS transcript of her 2019 Forms 1099. The review examiner assessed the credibility of these documents, along with the claimant's testimony, and determined that the documents were credible.

In light of the consolidated findings and documentation of the claimant's 2019 income, the claimant has satisfied her burden to present substantial and credible documentation of self-employment during the relevant time period.

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

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<sup>2</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>3</sup> Pub. L. 116-260 (Dec. 27, 2020), § 241; *see* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), 4(b)(ii), p. 5.

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

<sup>5</sup> *See* UIP 16-20, Change 4, Attachment I, C(2), p. I-10.

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 11, 2024**



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)**

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.

REB/rh