

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 21-01912

vs.

Referee Decision No. 0090240074-02

Employer/-None

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This is an appeal of a referee's decision affirming the Notice of Request Not Granted determination, Issue Identification No. 0090240074-02 (August 23, 2021), and holding the claimant eligible to receive a \$125 weekly benefit amount in Pandemic Unemployment Assistance ("PUA") under Section 2102 of the Coronavirus Aid, Relief, and Economic Security Act of 2020 ("CARES Act"), created by Public Law 116-136 (Mar. 27, 2020), as amended by the Continued Assistance for Unemployed Workers Act of 2020 (Dec. 27, 2020) (Pub. L. No. 116-260) and the American Rescue Plan Act of 2021 (Mar. 11, 2021) (Pub. L. No. 117-2), codified at 15 U.S.C. Chapter 116. Florida law governs the appeals process for PUA. 15 U.S.C. §9021(c)(5)(B). The Commission has jurisdiction pursuant to Section 443.151(4)(c), Florida Statutes.

That portion of the referee's decision addressing the timeliness issue is supported by the record and in accord with the law and, therefore, is approved. The issue on the merits is whether the claimant established eligibility for a weekly benefit amount of PUA greater than the minimum PUA weekly benefit amount of \$125. 15 U.S.C. §9021(d); 20 C.F.R. §625.6; §443.111(3), Fla. Stat. For reasons addressed below, we quash the referee's decision, the Notice of Request Not Granted determination, and the underlying PUA determination as premature, and refer to the Department of Revenue (DOR) the issue of whether the \$16,000 paid by the claimant's S corporation to the claimant as wages is considered reasonable compensation for services rendered to the corporation or whether distributions of the corporation's net income should be treated as wages to the extent the amounts are reasonable compensation for services rendered to the corporation. The issue of whether reported wages should be reassigned to different quarters based on the actual income flow is also referred to DOR. After DOR resolves these issues and any changes are implemented, the Department of Economic Opportunity (DEO) is directed to reconsider the issue of the claimant's monetary qualification for regular state reemployment assistance and/or PUA and issue the appropriate monetary determination(s).

Case History

The claimant filed requests for reemployment assistance benefits; however, the claimant was held not monetarily qualified on those claims.¹ Since the claimant did not monetarily qualify for regular state reemployment assistance benefits, the claimant filed for PUA benefits on June 23, 2021, stating she was first unable to work as a direct result of the pandemic on March 22, 2020.² A Pandemic Unemployment Assistance (PUA) Notice of Determination of Entitlement under the CARES Act determination (“PUA monetary determination”) was issued on June 25, 2021, holding the claimant monetarily qualified for the minimum PUA weekly benefit amount of \$125, effective February 21, 2021.³ The claimant filed a request for monetary reconsideration, and on August 23, 2021, a Notice of Request Not Granted determination was issued holding no change would be made to the PUA monetary determination.⁴ The claimant appealed this determination.

On the same day, DEO also issued a Notice of Request Not Granted determination, Issue Identification No. 0083656263-03 (August 23, 2021), holding that no changes would be made to the regular state reemployment assistance monetary determination because self-employment earnings are excluded from coverage by the Florida reemployment assistance law, and listing the employer as

¹ The claimant filed an initial reemployment assistance claim effective April 19, 2020, and a determination was issued on April 23, 2020, holding the claimant not monetarily qualified because there were no wages in the base period. In a subsequent May 17, 2021 monetary determination, the claimant was held not monetarily qualified for regular state reemployment assistance benefits on a February 21, 2020 claim because she had wages in only one quarter of the base period. To monetarily qualify for a regular state reemployment assistance claim, a claimant must have wage credits in two or more quarters of the base period of the claim, with the minimum base period wage credits equal to 1.5 times the high quarter wages but totaling at least \$3,400. §443.111(2), Fla. Stat. The “base period” for a claim is the first four of the last five completed calendar quarters immediately preceding the first day of the claimant’s benefit year. §443.036(7), Fla. Stat.

² PUA eligibility requires that an individual not be eligible for regular or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC) benefits. 15 U.S.C. §9021(a)(3)(A)(i).

³ Although the determination showed an effective date of February 21, 2021, DEO records reflect the claimant’s PUA claim was backdated. The claimant received \$125 weekly PUA benefits from the week ending April 25, 2020, through July 10, 2021, as well as Federal Pandemic Unemployment Compensation (FPUC) for multiple weeks.

⁴ Although the underlying determination on which the motion for reconsideration was based was a PUA claim, the Notice of Request Not Granted determination made findings that the claimant was self-employed and self-employment is excluded from coverage by Florida reemployment assistance law. As will be shown, this is not an accurate statement as to subchapter S corporations and, even if it were, it is not an appropriate basis to review whether the PUA weekly benefit amount is accurate.

S. H. Realty, LLC.⁵ Although the determination on its face does not identify the monetary determination to which it refers, CONNECT records reflect the underlying monetary determination on which it is based is the Notice of Monetary Determination issued May 17, 2021, holding the claimant not monetarily qualified for regular state reemployment assistance on the claim effective February 21, 2021, because she had wages in only one quarter of the base period.⁶

A hearing was scheduled for October 29, 2021, on the issue of the Notice of Request Not Granted determination on the PUA claim. The referee explained at that hearing he was only there to address the PUA claim. The claimant's husband, speaking on the claimant's behalf, indicated that the claimant has never been eligible for anything else and that, although she paid herself \$16,000 a year to contribute to social security, she never had an employer in the United States. He further indicated the claimant had no "standard" claim, and the only thing they were trying to get was PUA. The referee explained what documents were needed to address the Notice of Request Not Granted determination as to the PUA claim and continued the case for the claimant to submit her Schedule C from her 2019 tax documents.

At the subsequent November 18, 2021 hearing, the claimant's husband, again speaking on his wife's behalf due to a language barrier⁷ and with his wife's consent, testified that his wife worked as a real estate agent under the umbrella of K. W., dba S. H. Realty LLC, and that her real estate commission was paid to her subchapter S corporation, which in turn paid her annual wages of \$16,000. The claimant's husband testified that this distribution was made directly to the claimant from the S corporation for the purpose of contributing to social security.

Based upon the evidence presented, the referee made the following pertinent findings of fact:

The claimant filed a claim for Pandemic Unemployment Assistance effective April 19, 2020, establishing a base period of January 1, 2019 through December 31, 2019. The weekly benefit amount was determined to be \$125. The claimant worked as an independent contractor for [S. H.] Realty throughout 2019. The

⁵ S. H. Realty LLC appears to be listed as the employer in error. S. H. Realty LLC paid real estate commission checks to the claimant's S corporation rather than the claimant individually and had no employee/employer relationship with the claimant individually. It was the claimant's S corporation that paid the claimant "wages" and reported wages to DOR.

⁶ CONNECT records reflect that DEO has issued numerous other monetary determinations addressing the claimant's monetary qualification for benefits under various other claim effective dates. In light of the disposition of this case, we need not address these monetary determinations because the claimant's monetary qualification for benefits must be reexamined from the beginning.

⁷ The wife's first language is Albanian.

[remuneration] from [S. H.] Realty was solely by commissions payable to her S Corporation In 2019, [the corporation] earned income in the amount of \$163,748.21 reflected on the corporation's 2019 1099 form. The corporation's net profits for 2019 were \$79,143, reflected on the Schedule E of the claimant's 2019 1040 form. Claimant does not have a Schedule C for 2019. Claimant was not a sole proprietor in 2019, but an employee/owner of [the corporation]. Claimant received wages in the amount of \$16,000 in the fourth quarter of 2019 from [the corporation].

Based on these findings, the referee concluded:

[T]he claimant's Pandemic Unemployment Assistance weekly benefit amount is to be calculated on wages in the amount of \$16,000 in the fourth quarter of 2019. Though [the corporation] earned a net income of \$79,143 in 2019 as reflected on the 2019 1040 form Schedule E the claimant provided, that amount reflects the net profits of the corporate entity. The claimant personally earned wages in the amount of \$16,000 in the fourth quarter of 2019 in the base period from [the corporation]. As the record only reflects wages claimant earned in one quarter of the base period, the claimant is ineligible to receive benefits in an amount above \$125.

The referee affirmed the Notice of Request Not Granted determination and held the claimant eligible for PUA benefits in the amount of \$125 a week. Upon review of the record and arguments made on appeal, the Commission concludes the referee's decision, the Notice of Request Not Granted determination, and underlying PUA monetary determination must be quashed as premature for reasons to be set out below.

Analysis: Calculation of benefits for a Subchapter "S" Corporation

On appeal, the claimant contends that her PUA weekly benefit amount should be \$275 rather than the minimum PUA weekly benefit amount on two bases: (1) because the \$16,000 she was paid by her S corporation at the end of the year was her annual salary for the entire year and not just the fourth quarter in which it was paid and, therefore, she should not be restricted to the minimum weekly benefit amount due to only having benefits in one quarter, and (2) because the net profits from her S corporation should also be used in the calculation of her weekly benefit amount, which would result in a weekly benefit amount over \$275, she would be entitled to the \$275 maximum PUA weekly benefit amount.

The PUA weekly benefit amount is calculated using existing state wage records and any additional supporting documentation provided by the claimant to substantiate employment wages or self-employment income. Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter No. 16-20, Change 1 at I-4, #13 (Apr. 27, 2020) ("UIPL No. 16-20, Change 1"). A claimant who has no wages or insufficient wages from employment, or has no income or insufficient net income from self-employment, to compute a weekly benefit amount under state law, is entitled to the minimum PUA weekly benefit amount of \$125. 15 U.S.C. §9021(d)(1)(A)(i); 20 C.F.R. §625.6(b); UIPL No. 16-20, Change 1 at I-4, #14; Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter No. 03-20 at I-1 (Dec. 12, 2019).

For self-employed individuals who work through a sole proprietorship,⁸ the most common self-employment arrangement, the PUA weekly benefit amount is computed using the net income derived from the performance of services reported on the individual's income tax return. In R.A.A.C. Docket No. 21-00175 (April 19, 2021), we explained that under DUA regulations, self-employment income must derive from "the performance of services" by the claimant in order to be credited for PUA benefit calculations. For that reason, for sole proprietors we look to income reported on Schedule C or Schedule F. 20 C.F.R. §625.6(a)(2); UIPL No. 16-20, Change 1 at I-6, #22.

Here, the claimant did not file a Schedule C but instead filed a Schedule E, which is used to report non-wage income from rental properties, royalties, partnerships, S corporations, estates, trusts, and residual interests in REMICs. This filing was consistent with the claimant's use of an S corporation as a business organization. As we understand DOR's interpretation of Florida reemployment assistance tax law, a valid subchapter S corporation is deemed a statutory employer for the owner who is performing services through that corporation, and the S corporation is consequently responsible for paying reemployment assistance tax for its employee(s). The owner/employee may then be entitled to wage credits for her work.⁹ However, income, other than wages, paid to an employee through an S corporation distribution is legally income initially derived from the S corporation, not the claimant herself. While federal tax law permits the owner of an S corporation to ignore the corporate structure to the extent of avoiding corporate income tax, Florida reemployment assistance tax law, at least as we understand DOR's interpretation, does not treat such income as income from self-employment.

⁸ A sole proprietorship is a single-person business that is not incorporated or organized under some other arrangement that constitutes a separate legal entity, such as a limited liability company (LLC).

⁹ Shareholders who are also employees of a subchapter S corporation, or of an LLC which elected to be treated as an S corporation for federal income tax purposes, may receive both wages and distributions. *The Florida DOR Tax Information Publication (TIP) No. 1573B-01*, issued July 23, 2015.

To reduce federal and state employment taxes, an S corporation might misclassify most of the amount given to a shareholder/officer (who performs services for the S corporation or LLC treated as an S corporation) as distributions rather than classify a sufficient amount as wages. However, the amount of wages reported paid to the shareholder-employee must be reasonable for the services being performed or the Internal Revenue Service (IRS) and/or DOR may reclassify as wages some or all of the amounts misclassified as distributions, etc. *See David E. Watson, P.C. v. United States*, 668 F.3d 1008 (8th Cir. 2012) (explaining IRS interpretation of “reasonable compensation” for FICA purposes); *Joseph Radtke S.C. v. United States*, 895 F.2d 1196 (7th Cir. 1990); *Spicer Accounting, Inc. v. United States*, 918 F.2d 90 (9th Cir. 1990); *Joly vs. Commissioner*, 211 F.3d 1269 (6th Cir., 2000); *Joseph M. Grey Public Accountant, P.C. vs. Commissioner of Internal Revenue*, 119 T.C. 121 (2002). In *Veterinary Surgical Consultants, P.C., v. Commissioner of Internal Revenue*, 90 Fed. Appx. 669 (3rd Cir. 2004), the court clarified that “an employer cannot avoid Federal employment taxes by characterizing compensation paid to its sole director and shareholder as distributions of the corporation’s net income, rather than wages.”

In the IRS fact sheet FS-2008-25 Wage Compensation for S Corporation Officers, available at: <http://www.irs.gov/uac/Wage-Compensation-for-S-Corporation-Officers>, the IRS explains:

The instructions to the Form 1120S, U.S. Income Tax Return for an S Corporation, state "Distributions and other payments by an S corporation to a corporate officer must be treated as wages to the extent the amounts are reasonable compensation for services rendered to the corporation."

The amount of the compensation will never exceed the amount received by the shareholder either directly or indirectly. However, if cash or property or the right to receive cash and property did go to the shareholder, a salary amount must be determined and the level of salary must be reasonable and appropriate.

There are no specific guidelines for reasonable compensation in the Code or the Regulations. The various courts that have ruled on this issue have based their determinations on the facts and circumstances of each case.

While there are no specific guidelines for reasonable compensation in the Code or the Regulations, the IRS, in their fact sheet, lists the following factors considered by the courts in determining reasonable compensation: training and experience; duties and responsibilities; time and effort devoted to the business; dividend history; payments to non-shareholder employees; timing and manner of paying bonuses to key people; what comparable businesses pay for similar services; compensation agreements; and use of a formula to determine compensation. Additional guidance is available from the IRS online at: <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/S-Corporation-Compensation-and-Medical-Insurance-Issues>.

While earnings are not necessarily restricted to the quarter in which they are reported,^{10,11} we are unable to determine from the record whether the amount of earnings reported was reasonable compensation for the services the claimant rendered to her S corporation; whether the reasonable compensation when assigned to the weeks in which it was earned would qualify the claimant for regular state reemployment assistance; and if and/or when the claimant would be eligible for PUA benefits.

DEO does not have initial jurisdiction over reemployment assistance tax determinations and, therefore, can render no binding opinion on these issues at this stage. *See* §443.141, Fla. Stat. (establishing the investigation, determination and appeals processes for reemployment assistance tax issues). *See also* Fla. Admin. Code Ch. 73B-10. We do, however, have jurisdiction over the issue of wage credits. Because these issues are interconnected, we refer to DOR the issues of whether the wages reported as paid to the claimant were reasonable compensation for the claimant's services rendered to the S corporation; whether other income paid to the claimant was misclassified and should be reclassified as wages; and whether adjustments should be made in the quarter assignments of any reemployment assistance tax payments made or which shall be made pursuant to this review.

Thus, in addition to this referral to DOR, we rule as follows as to the merits of this case and provide the following guidance to DEO for any further review. While wages in self-employment cannot normally be used to establish monetarily qualification for a regular state reemployment assistance claim (*see*

¹⁰ *See* Fla. Admin. Code R. 73B-11.016(1)(b).

¹¹ Based upon the existing record, however, we would not be inclined to reallocate the claimant's wages across the base period. *See* R.A.A.C. Order No. 20-01637 (March 25, 2021) (concluding the claimant did not meet the burden for assigning wages to different quarters where the record indicated the claimant's annual wages were reported in only one quarter, and the claimant provided no evidence as to when the wages were earned and whether there was any correlation between draws and when wages were earned. In deciding against reassignment of the wage credits across the base period of the claim, the referee gave weight to the fact that the claimant is both the owner *and* employee of his firm and, as such, he made the decision to report his wages to DOR only during the fourth quarter of each calendar year for tax purposes).

§443.1216(1)(a)2., Fla. Stat.), we adopt DOR's position that employment through an S corporation is not normally "self-employment" within the meaning of the statute. A valid subchapter S corporation is deemed a statutory employer for the owner who is performing services through that corporation, and the S corporation is consequently responsible for paying reemployment assistance tax for its employee(s). Shareholders who are also employees of an S corporation or of an LLC which elected to be treated as an S corporation for federal income tax purposes, may receive both wages and distributions. The claimant may, therefore, be eligible for regular state reemployment assistance which would result in her being ineligible for PUA.¹²

Accordingly, we quash the referee's decision, the Notice of Request Not Granted determination, and the underlying PUA monetary determination until DOR reviews the issues identified above. After DOR has resolved those issues, DEO is directed to determine whether the claimant is monetarily qualified for regular state reemployment assistance and, if so, in what amount. If the claimant is not monetarily qualified for regular state reemployment or PEUC, DEO should determine whether the claimant is qualified for PUA.

Based on the testimony and tax forms submitted, a question also arises as to if and/or when the claimant was totally or partially unemployed, a prerequisite for receiving regular state reemployment assistance, as the records reflect the claimant's S corporation reported the claimant was paid wages of \$16,000 in both 2019 and 2020, and the tax forms submitted reflect nonemployee compensation of \$163,748.21 to K. B. PA on a 2019 1099 MISC tax form and \$90,705.63 on her 2020 1099-NEC nonemployee compensation for K. B. PA for 2020. Given that her S corporation had earnings in both years, and that in the request for review the claimant indicated she was paid annual wages at the end of the year which should be assigned equally for each quarter, and she was paid wages of \$16,000 in both 2019 and 2020, it raises the question of whether the claimant was, in fact, "unemployed." DEO should investigate how much the claimant worked and earned for each week in which she was paid benefits. DOR SUNTAX records reflect that prior to 2019, the claimant's S corporation reported her earnings quarterly and her earnings were substantially more than reported in 2019 and 2020. The claimant should be questioned as to why her S corporation went from reporting her earnings quarterly to reporting them annually, and how her quarterly earnings were determined both before and after 2019.

¹² An individual is ineligible for PUA for the period she/he is eligible for regular state reemployment assistance, PEUC, or extended benefits. 15 U.S.C. §9021(a)(3)(A)(i).

Disposition

Accordingly, the referee's decision affirming the Notice of Request Not Granted determination on the claimant's PUA claim and the underlying determination are quashed as premature, the issues of reasonable compensation and wage assignment as discussed above are referred to DOR and, after DOR resolves these issues, DEO is directed to review the claimant's eligibility for regular state reemployment assistance benefits, PEUC, and/or extended benefits, and then PUA as necessary. In addressing the claimant's eligibility for regular state reemployment assistance benefits, DEO should review whether the claimant was in fact "unemployed" for the period in which she was paid benefits.

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

Frank E. Brown, Chairman
Joseph D. Finnegan, Member

This is to certify that on
3/31/2022,
the above order was filed in the office of
the Clerk of the Reemployment
Assistance Appeals Commission, and a
copy mailed to the last known address
of each interested party.
By: Mary Griffin
Deputy Clerk



DEPARTMENT OF ECONOMIC OPPORTUNITY
REEMPLOYMENT ASSISTANCE PROGRAM
PO BOX 5250
TALLAHASSEE, FL 32314 5250



*257979539 *

IMPORTANT:	For free translation assistance, you may call 1-800-204-2418. Please do not delay, as there is a limited time to appeal.
IMPORTANTE:	Para recibir ayuda gratuita con traducciones, puede llamar al 1-800-204-2418. Por favor hágalo lo antes posible, ya que el tiempo para apelar es limitado.
ENPÒTAN:	Pou yon intèpret asistè ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pràn àmpil tòn, paské tòn limitè pou ou ranpli apèl la.

Docket No. 0090 2400 74-02

Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES

Employer

Claimant

PANDEMIC UNEMPLOYMENT ASSISTANCE APPEAL DECISION

Important appeal rights are explained at the end of this decision.

Derechos de apelación importantes son explicados al final de esta decisión.

Yo eksplike kèk dwa dapèl enpòtan lan fen desizyon sa a.

- Issues Involved:**
- WAGE CREDITS:** Whether the claimant was paid sufficient base period wages to qualify for unemployment compensation benefits, pursuant to Sections 443.036(21), (27), (45); 443.091(1)(g); 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.
- ADDITIONAL WAGE CREDITS:** Whether the claimant earned additional wages for insured work during the base period, pursuant to Sections 443.036(21), (27), (45), 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.
- TIMELINESS:** Whether an appeal, request for reconsideration, or request to reopen an appeal was filed within twenty days after mailing of the determination or decision to the adversely affected party's address of record or, in the absence of mailing, within twenty days after delivery, pursuant to Sections 443.151(3); 443.151(4)(b)1., Florida Statutes; Rules 73B-10.022(1); 10.022(5); 10.023(1); 11.017(2); 20.002-007, Florida Administrative Code.
- WAGE CREDITS:** Whether the claimant was paid sufficient base period wages to qualify for unemployment compensation benefits, pursuant to Sections 443.036(21), (27), (45); 443.091(1)(g); 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.
- ADDITIONAL WAGE CREDITS:** Whether the claimant earned additional wages for insured work during the base period, pursuant to Sections 443.036(21), (27), (45), 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.
- INSURED WORK:** Whether services performed by the claimant during the base period constitute "employment," pursuant to Sections 443.036(21), 443.036(27); 443.1216, Florida Statutes.

Jurisdictional Issue - Timeliness: The appeal was on its face timely. The appeal was received by the Department on September 13, 2021. The appeal due date was September 13, 2021.

The law provides that a determination is final unless an adversely affected party files an appeal or request for reconsideration within twenty days after the mailing date of the determination notice to the party's last-known address or, in lieu of mailing, within twenty days after delivery of the notice.

The record reflects that the claimant made a timely attempt to appeal the determination. It is concluded that the appeal was timely, and the appeals referee has jurisdiction over the issues.

Findings of Fact: The claimant filed a claim for Pandemic Unemployment Assistance effective April 19, 2020, establishing a base period of January 1, 2019 through December 31, 2019. The weekly benefit amount was determined to be \$125. The claimant worked as an independent contractor for S. H. Realty throughout 2019. The remuneration from S. H. Realty was solely by commissions payable to her S Corporation, K. B. PA.

In 2019, K. B. PA earned income in the amount of \$163,748.21 reflected on the corporation's 2019 1099 form. The

corporations net profits for 2019 were \$79,143, reflected on the Schedule E of the claimant's 2019 1040 form. Claimant does not have a Schedule C for 2019. Claimant was not a sole proprietor in 2019, but an employee/owner of a S Corporation K. B. PA.

Claimant received wages in the amount of \$16,000 in the fourth quarter of 2019 from K. B.

Conclusions of Law: The CARES Act, PL 116-136, section 2102 (d) 2; 15 U.S.C.9201(d)2, provides that the weekly benefit amount for Pandemic Unemployment Assistance shall be the amount determined under the appropriate section of the Code of Federal Regulations relating to Disaster Unemployment Assistance, specifically, 20 C.F.R. 625.6.

Federal regulations require that the weekly PUA benefit amount will be computed using the benefit formula for regular unemployment claims. The PUA weekly amount cannot exceed \$275. The claimant's most recent federal income tax year will be used as the base period to compute the PUA weekly amount. However, if the weekly amount computed under State law is less than the State's average weekly benefit amount for regular claims or the claimant has insufficient wages from employment or insufficient or no net income from self-employment, the weekly PUA amount will be \$125, which is half the State's average weekly payment of regular benefits. 20 C.F.R. §625.6; §443.111, Florida Statutes.

To be monetarily eligible for Reemployment Assistance (or regular unemployment) benefits, the claimant must have:

(a) Base period wages for insured work in two or more calendar quarters of the base period; and

(b) Total base period wages equaling at least 1.5 times the wages paid during the high quarter of the base period, but not less than \$3400.

Federal regulations require that self-employment income used in computing the PUA weekly amount will be the net income reported on the claimant's tax return as income from self-employment, which was dependent upon performance of services by the claimant. If a tax return has not yet been filed, the weekly assistance amount will be \$125 for an individual who submits documentation to substantiate employment or self-employment, but not documentation of wages earned or paid during the base period. 20 C.F.R. §625.6

The record reflects that the claimant's Pandemic Unemployment Assistance weekly benefit amount is to be calculated on wages in the amount of \$16,000 in the fourth quarter of 2019. Though K. B. PA earned a net income of \$79,143 in 2019 as reflected on the 2019 1040 form Schedule E the claimant provided, that amount reflects the net profits of the corporate entity. The claimant personally earned wages in the amount of \$16,000 in the fourth quarter of 2019 in the base period from K. B. PA. As the record only reflects wages claimant earned in one quarter of the base period, the claimant is ineligible to receive benefits in an amount **above** \$125.

Decision: The non-monetary determination dated August 23, 2021, finding the claimant eligible for Pandemic Unemployment Assistance is **AFFIRMED**. The claimant is eligible to receive Pandemic Unemployment Assistance benefits in the amount of \$125 a week.

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on November 22, 2021.

R. Sears
Appeals Referee



ANTONIA SPIVEY (WATSON), Deputy Clerk

IMPORTANT - APPEAL RIGHTS: This decision will become final unless a written request for review or reopening is filed within 20 calendar days after the distribution/mailed date shown. If the 20th day is a Saturday, Sunday or holiday defined in F.A.C. 73B-21.003(4), filing may be made on the next day that is not a Saturday, Sunday or holiday. If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the Department and set forth in a separate overpayment determination. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

A party who did not attend the hearing for good cause may request reopening, including the reason for not attending, at connect.myflorida.com or by writing to the address at the top of this decision. The date of the confirmation page will be the filing date of a request for reopening on the Department's Web Site.

A party who attended the hearing and received an adverse decision may file a request for review to the Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (Fax: 850-488-2123); <https://raaciap.floridajobs.org>. If mailed, the postmark date will be the filing date. If faxed, hand-delivered, delivered by courier service other than the United States Postal Service, or submitted via the Internet, the date of receipt will be the filing date. To avoid delay, include the docket number and the last five digits of the claimant's social security number. A party requesting review should specify any and all allegations of error with respect to the referee's decision, and provide factual and/or legal support for these challenges. Allegations of error not specifically set forth in the request for review may be considered waived.

There is no cost to have a case reviewed by the Commission, nor is a party required to be represented by an attorney or other representative to have a case reviewed. The Reemployment Assistance Appeals Commission has not been fully integrated into the Department's CONNECT system. While correspondence can be mailed or faxed to the Commission, no correspondence can be submitted to the Commission via the CONNECT system. All parties to an appeal before the Commission must maintain a current mailing address with the Commission. A party who changes his/her mailing address in the CONNECT system must also provide the updated address to the Commission, in writing. All correspondence sent by the Commission, including its final order, will be mailed to the parties at their mailing address on record with the Commission.

IMPORTANTE - DERECHOS DE APELACIÓN: Esta decisión pasará a ser final a menos que una solicitud por escrito para revisión o reapertura se registre dentro de 20 días de calendario después de la distribución/fecha de envío marcada en que la decisión fue remitida por correo. Si el vigésimo (20) día es un sábado, un domingo o un feriado definidos en F.A.C. 73B-21.003(4), el registro de la solicitud se puede realizar en el día siguiente que no sea un sábado, un domingo o un feriado. Si esta decisión descalifica y/o declara al reclamante como inelegible para recibir beneficios que ya fueron recibidos por el reclamante, se le requerirá al reclamante rembolsar esos beneficios. La cantidad específica de cualquier sobrepago [pago excesivo de beneficios] será calculada por la Agencia y establecida en una determinación de pago excesivo de beneficios que será emitida por separado. Sin embargo, el límite de tiempo para solicitar la revisión de esta decisión es como se establece anteriormente y dicho límite no es detenido, demorado o extendido por ninguna otra determinación, decisión u orden.

Una parte que no asistió a la audiencia por una buena causa puede solicitar una reapertura, incluyendo la razón por no haber comparecido en la audiencia, en connect.myflorida.com o escribiendo a la dirección en la parte superior de esta decisión. La fecha de la página de confirmación será la fecha de presentación de una solicitud de reapertura en la página de Internet del Departamento.

Una parte que asistió a la audiencia y recibió una decisión adversa puede registrar una solicitud de revisión con la Comisión de Apelaciones de Servicios de Reempleo; Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (Fax: 850-488-2123); <https://raaciap.floridajobs.org>. Si la solicitud es enviada por correo, la fecha del sello de la oficina de correos será la fecha de registro de la solicitud. Si es enviada por telefax, entregada a mano, entregada por servicio de mensajería, con la excepción del Servicio Postal de Estados Unidos, o realizada vía el Internet, la fecha en la que se recibe la solicitud será la fecha de registro. Para evitar demora, incluya el número de expediente [docket number] y los últimos cinco dígitos del número de seguro social del reclamante. Una parte que solicita una revisión debe especificar cualquiera y todos los alegatos de error con respecto a la decisión del árbitro, y proporcionar fundamentos reales y/o legales para substanciar éstos desafíos. Los alegatos de error que no se establezcan con especificidad en la solicitud de revisión pueden considerarse como renunciados.

No hay ningún costo para tener un caso revisado por la Comisión, ni es requerido que una parte sea representado por un abogado u otro representante para poder tener un caso revisado. La Comisión de Apelación de Asistencia de Reempleo no ha sido plenamente integrado en el sistema CONNECT del Departamento. Mientras que la correspondencia puede ser enviada por correo o por fax a la Comisión, ninguna correspondencia puede ser sometida a la Comisión a través del sistema CONNECT. Todas las partes en una apelación ante la Comisión deben mantener una dirección de correo actual con la Comisión. La parte que cambie su dirección de correo en el sistema CONNECT también debe proporcionar la dirección actualizada a la Comisión, por escrito. Toda la correspondencia enviada por la Comisión, incluida su orden final, será enviada a las partes en su dirección de correo en el registro con la Comisión.

ENPÒTAN - DWA DAPÈL: Desizyon sa a ap definitiv sòf si ou depoze yon apèl nan yon delè 20 jou apre dat distribisyon/postaj. Si 20yèm jou a se yon samdi, yon dimanch oswa yon jou konje, jan sa defini lan F.A.C. 73B-21.003(4), depo an kapab fèt jou aprè a, si se pa yon samdi, yon dimanch oswa yon jou konje. Si desizyon an diskalifye epi/oswa deklare moun k ap fè demann lan pa kalifye pou alokasyon li resevwa deja, moun k ap fè demann lan ap gen pou li remèt lajan li te resevwa a. Se Ajans lan k ap kalkile montan nenpòt ki peman anplis epi y ap detèmine sa lan yon desizyon separe. Sepandan, delè pou mande revizyon desizyon sa a se delè yo bay anwo a; Okenn lòt detèminasyon, desizyon oswa lòd pa ka rete, retade oubyen pwolonje dat sa a.

Yon pati ki te gen yon rezon valab pou li pat asiste seyans lan gen dwa mande pou yo ouvri ka a ankò; fòk yo bay rezon yo pat ka vini an epi fè demann nan sou sitwèb sa a, connect.myflorida.com oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat cofimasyon page sa pral jou ou ranpli deman pou reouvewti dan web sit depatman.

Yon pati ki te asiste odyans la epi li resevwa yon desizyon negatif kapab soumèt yon demann pou revizyon retounen travay Asistans Komisyon Apèl la, Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (Faks: 850-488-2123); <https://raaciap.floridajobs.org>. Si poste a, dat tenm ap dat li ranpli aplikasyon. Si fakse, men yo-a delivre, lage pa sèvis mesajè lòt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entènèt la, dat yo te resevwa ap dat li ranpli aplikasyon.

Pou evite reta, mete nimewo rejis la ak senk dènye chif nimewo sekirite sosyal demandè a sosyal demandè a sekirite. Yon pati pou mande revizyon ta dwe presize nenpòt ak tout akizasyon nan erè ki gen rapò ak desizyon abit la, yo epi bay sipò reyèl ak / oswa legal pou defi sa yo. Alegasyon sou erè pa espesyalman tabli nan demann nan pou revizyon yo kapab konsidere yo egzante.

Pa gen okenn kou pou Komisyon an revize yon ka, ni ke yon pati dwe reprezante pa yon avoka oubyen lòt reprezantan pou ke la li a revize. Komisyon Apèl Asistans Reyanbochaj pa te entegre antyèman nan sistèm CONNECT Depatman an. Byenke korespondans kapab fakse oubyen pòste bay Komisyon an, okenn korespondans pa kapab soumèt bay Komisyon an atravè sistèm CONNECT. Tout pati ki nan yon apèl devan Komisyon an dwe mentni yon adrès postal ki ajou avèk Komisyon an. Yon pati ki chanje adrès postal li nan sistèm CONNECT la dwe bay Komisyon an adrès ki mete ajou a tou. Tout korespondans ke Komisyon an voye, sa enkli manda final li, pral pòste voye bay pati yo nan adrès postal yo genyen nan achiv Komisyon an.

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