

Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Paul T. Fitzgerald, Esq.
Chairman
Stephen M. Linsky, Esq.
Member
Judith M. Neumann, Esq.
Member

Issue ID: 0002 2259 49

BOARD OF REVIEW DECISION

0002 2259 49 (May 9, 2014) – Where DUA notified the claimant to contact another state in which she had potential eligibility for regular unemployment benefits and she failed to do so, the claimant was properly disqualified from receiving EUC benefits in Massachusetts.

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 Emergency Unemployment Benefits (EUC) following her separation from employment. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant filed a claim for benefits with the DUA and was determined to be eligible for regular unemployment benefits, effective July 24, 2011. After exhausting these regular benefits, the claimant collected EUC benefits during the weeks ending March 10, 2012, through July 21, 2012. On February 14, 2013, DUA issued a Notice of Redetermination and Overpayment, determining that the claimant was not entitled to these EUC benefits and requiring her to return \$10,205.00 to the unemployment fund. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's re-determination and denied EUC benefits in a decision rendered on September 16, 2013. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was eligible for a regular unemployment benefit claim in the State of Connecticut and, thus, was disqualified, pursuant to the Supplemental Appropriation Act of 2008, Title IV — Emergency Unemployment Compensation Public Law 110-252 (June 30, 2008), § 4001(b)(2). 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 make further subsidiary findings of fact from the record pertaining to whether the DUA had notified the claimant of her obligation to file a claim in Connecticut. 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 conclusion that the claimant is ineligible for EUC benefits in Massachusetts is supported by substantial and credible evidence and is free from error of law, where the DUA notified the claimant that she was potentially eligible for a regular unemployment claim in Connecticut, instructed her to file such a claim, but the claimant did not do so.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessments are set forth below in their entirety:

1. On 11/19/12, the Division of Unemployment Assistance (DUA) sent the claimant a Notice of Claim Discrepancy informing her that a redetermination of her eligibility for EUC benefits could be made based upon her potential eligibility to file a regular unemployment benefit claim in Connecticut, effective 03/04/12.
2. This notice also alerted the claimant to the fact that this redetermination could result in a disqualification from receiving further EUC benefits and an overpayment, requiring her to repay EUC benefits received during the weeks ending 03/10/12 through 07/21/12.
3. On 12/17/12, the claimant notified the DUA [sic] responded to the 11/19/12 Notice of Claim Discrepancy recommending the DUA contact the State of Connecticut directly.
4. On 01/31/13, a DUA representative made an effort to contact the claimant in response to her 12/17/12 letter. The DUA representative left the claimant a voice mail message informing the claimant that she was required to file an unemployment claim in Connecticut herself.
5. The claimant did not respond to the DUA representative's voice mail message.
6. On 02/14/13, the DUA sent a Notice of Redetermination and Overpayment citing disqualification under the Supplemental Appropriations Act, 2008, Title IV, § 4001(b)(2) because she had to file a new regular claim for unemployment benefits in another state/jurisdiction (Connecticut).
7. As a result the claimant received benefits to which she was ultimately determined not to be entitled for twenty weeks ending 03/10/12 through 07/21/12.
8. The overpayment was due to error without fraudulent intent.

Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact and credibility assessment except as follows. We accept consolidated finding # 7 only insofar as it reflects the content of the DUA Notice of Redetermination and Overpayment, referenced in consolidated finding # 6. In adopting the remaining findings, we deem them to be supported by

substantial and credible evidence. While we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant is disqualified from receiving EUC benefits, we believe that it is because she failed to contact Connecticut to confirm whether she was eligible to file a regular unemployment claim, as outlined below.

As a condition of receiving EUC benefits, the federal government requires that claimants "have no rights to regular compensation . . . with respect to a week under such [state's] law or any other State unemployment compensation law" ¹ They must have exhausted all of the regular unemployment benefits to which they were entitled in the benefit year that includes such week. 20 C.F.R. § 615.4(a) and 20 C.F.R. § 615.5(a)(1).

States that are paying EUC must advise individuals of their potential entitlement to regular unemployment benefits in another state. U.S. Department of Labor Unemployment Insurance Program Letter No. 4-10, Change 4, p. 2 (Aug. 13, 2010) ("UIPL 4-10, Change 4"). Id. Only the other state can determine whether the claimant is eligible to file a claim for regular benefits in that state. In order to continue to receive EUC benefits, individuals who have potential eligibility for regular benefits in another state must contact that other state within ten (10) business days from the date a notice to contact that state is issued by the state paying EUC benefits. Id.

On November 19, 2012, the DUA issued a Notice of Claim Discrepancy to the claimant, advising her that she was potentially eligible for regular benefits in Connecticut for the weeks ending March 10, 2012, through July 21, 2012. (Exhibit 1). The notice further advised the claimant that a redetermination of her eligibility for these paid EUC benefits might be necessary, which could result in the claimant being liable to repay them. The notice required a response from the claimant within ten business days. Her response to this notice was to instruct the DUA to contact Connecticut.

The DUA's obligation was to provide notice to the claimant, not to initiate a claim on her behalf. When individuals are given notice that EUC benefits will be suspended for failure within ten business days to contact another state in which they have potential regular unemployment entitlement, EUC benefits must be suspended if the individual fails to do so. UIPL 4-10, Change 4, page 3-4; Attachment 1, page 3, Question #4.

In this case, the DUA tried a second time to make this clear to the claimant before issuing its Notice of Redetermination. A DUA representative left a voicemail message for the claimant on January 31, 2013, explaining that the claimant had to file a claim in Connecticut herself. Since nothing in the record shows that the claimant made any effort to initiate a claim for regular benefits in Connecticut, the DUA was obligated to disqualify the claimant from receipt of those EUC benefits.

We, therefore, conclude as a matter of law that the claimant was ineligible for EUC benefits during the period weeks ending March 10, 2012, through July 21, 2012, pursuant to the

¹ Sec. 4001(b)(2) of Supplemental Appropriation Act, 2008, Title IV — Emergency Unemployment Compensation, Public Law 110-252 (June 30, 2008).

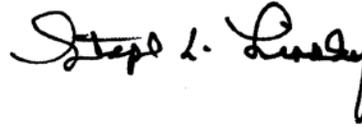
Supplemental Appropriation Act of 2008, Title IV — Emergency Unemployment Compensation
Public Law 110-252, § 4001(b)(2).

The review examiner's decision is affirmed. The claimant was overpaid EUC benefits for the weeks ending March 10, 2012, through July 21, 2012, and must repay \$10,205.00 to the unemployment fund, without interest.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 9, 2014



Paul T. Fitzgerald, Esq.
Chairman



Stephen M. Linsky, Esq.
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS 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.

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.

AB/rh