

0008 9546 97 – CTRM (Aug. 17, 2015) – Even though the claimant was disqualified from receiving unemployment benefits in Connecticut for a non-monetary reason, federal law prohibits him from collecting Emergency Unemployment Compensation from Massachusetts on an earlier claim, because he remained *monetarily* eligible for benefits in Connecticut. *[Note: The District Court affirmed the Board of Review’s decision.]*

**Board of Review**  
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**Issue ID: 0008 9546 97**  
**Claimant ID: 1922649**

## **BOARD OF REVIEW DECISION**

### **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 benefits for the period from the week ending October 12, 2012, through the week ending March 9, 2013. Benefits were denied on the ground that the claimant received unemployment benefits under the laws of another state, pursuant to G.L. c. 151A, § 26.

The claimant had filed a claim for unemployment benefits, which was determined to be effective February 12, 2012. The claimant then received unemployment benefits. On September 25, 2013, the DUA sent the claimant a Notice of Disqualification, informing him that since he received unemployment benefits in another state, he was not entitled to benefits in Massachusetts.<sup>1</sup> The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency’s initial determination in a decision rendered on June 4, 2014. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On March 2, 2015, a justice of the District Court ordered the Board to address whether the claimant would be entitled to unemployment benefits in Massachusetts, where he was ultimately determined to be not eligible for benefits in Connecticut. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning the claimant’s Connecticut unemployment claim. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Following the Board’s review of the record from the remand hearing and the consolidated findings of fact, the Board sent the claimant a letter on July 2, 2015, indicating that the Board had determined that other provisions of law may be applicable in this matter. Specifically, Sections 4001(b)(2) and 4001(c) of the Supplemental Appropriation Act, 2008, Title IV — Emergency Unemployment Compensation, Public Law 110-252 (June 30, 2008) (“Supplemental Appropriation Act of 2008”) must be applied in this case. The Board’s letter also indicated that certain information necessary to

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<sup>1</sup> No dates were noted in the original September 25, 2013, determination. *See* Exhibit # 3.

decide the case was going to be considered by the Board, and that the claimant was being afforded the opportunity to submit reasons contesting the accuracy of that information and the applicability of the Supplemental Appropriation Act of 2008. The claimant did not respond.

The issue before the Board is whether the review examiner's conclusion that the claimant is not entitled to benefits from Massachusetts beginning October 7, 2012, is supported by substantial and credible evidence and is free from error of law, where the claimant was receiving EUC benefits in Massachusetts as of October 7, 2012, but he was monetarily eligible for a new regular unemployment claim in Connecticut as of that same date.

After reviewing the entire record, including the District Court's Order, the records of both the initial and remand hearings, and the consolidated findings of fact, we affirm the review examiner's decision that the claimant was overpaid benefits from Massachusetts. We do not do so, however, pursuant to the provisions of G.L. c. 151A, § 26, but rather under provisions of the Supplemental Appropriation Act of 2008.

#### Findings of Fact

The review examiner's consolidated findings of fact, which were issued following the District Court remand, are set forth below in their entirety:

1. On 02/23/12, the claimant filed a claim for unemployment benefits in Massachusetts with an effective date of 02/12/12.
2. The claimant also filed a claim for unemployment in Connecticut with an effective date of 10/13/12. The beginning and ending dates of the claimant's benefit year in the State of Connecticut were 10/13/12 through 02/09/13.
3. Prior to 10/13/12, the claimant worked three days in the State of Connecticut. The claimant failed the employer's pre-employment drug screen test; the employer discharged the claimant.
4. The claimant telephoned the Massachusetts DUA to reopen his claim.
5. Subsequently, the claimant telephoned the Massachusetts DUA to be placed on a federal extension; the DUA representative advised the claimant that he should have been collecting UI benefits in Connecticut.
6. The claimant contacted the State of Connecticut about the matter and was advised he should have been collecting benefits from Connecticut since October 2012. The representative assisted the claimant in filing a claim.
7. Subsequently, the claimant received approximately \$5,500.00 from the State of Connecticut in unemployment benefits for benefit year.
8. The Connecticut employer appealed the claimant's eligibility; and the claimant's approval to receive benefits was ultimately reversed in a hearing.

9. The State of Connecticut notified the claimant that he was overpaid unemployment benefits and required to repay the state.
10. The claimant ultimately repaid the State of Connecticut the overpaid unemployment benefits.
11. Based on information ascertained from both states, the local office determined that the claimant was subject to disqualification under Section 26 of the Law on the basis that he “received unemployment benefits in another state.”
12. On 09/25/13, the local office issued a Notice of Disqualification stating that the claimant was subject to disqualification for the period in question.
13. The claimant appealed that determination.

#### 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 reject the portion of Finding of Fact # 2 that states what the claimant’s benefit year was in Connecticut. The “Monetary Determination of Benefits” from Connecticut is contained within Remand Exhibit # 6. That document states clearly that the benefit year for the Connecticut claim ran from October 7, 2012 through October 5, 2013. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we conclude that the claimant was not entitled to receive benefits from Massachusetts beginning October 7, 2012, because he had been receiving EUC benefits from Massachusetts, he was monetarily eligible for a new regular Connecticut unemployment claim as of October 7, 2012, and federal EUC law dictates that EUC benefits cannot be paid when a claimant is monetarily eligible for a new employment claim.

We first address G.L. c. 151A, § 26. That section of the Massachusetts state unemployment law states the following:

No waiting period shall be served and no benefits shall be paid under this chapter to an individual for any week with respect to which, or a part of which, he has received or is seeking unemployment benefits under an unemployment compensation law or employment security law of any other state or of the United States; provided that, *if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this section shall not apply.* (Emphasis supplied.)

It is undisputed that the claimant received benefits from the state of Connecticut from the week ending October 13, 2012 through the week ending February 9, 2013. See Remand Exhibit # 6

(April 2, 2013 “Corrected Decision” from Connecticut).<sup>2</sup> Although evidence regarding the claimant’s ultimate disqualification in Connecticut was unclear or lacking at the initial hearing, the documentation submitted by the claimant has now shown that he was eventually determined by Connecticut not to have been eligible to receive those benefits. Therefore, under the final clause of G.L. c. 151A, § 26, that statute does not disqualify the claimant from receiving benefits in Massachusetts as of October 7, 2012.

However, as noted above, the claimant was receiving EUC benefits in Massachusetts as of October 7, 2012. The EUC benefits are paid pursuant to a federal program which is governed, in part, by the Supplemental Appropriation Act of 2008. Pursuant to the Supplemental Appropriation Act of 2008, 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 law. . . .” A claimant must exhaust 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).<sup>3</sup>

Here, arguably, the claimant has no rights to regular compensation in any other state, since, as we noted above, the claimant has been determined to be ineligible for benefits in Connecticut. However, a separate provision of federal law specifically covers such a situation. If a claimant is determined to be monetarily eligible for regular compensation in a state, he is deemed to have received those benefits, even though the benefits may have been totally reduced due to a non-monetary disqualification. 20 C.F.R. § 6.15(a)(2) and (b)(3). Thus, even if the claimant is disqualified from receiving benefits in Connecticut (that is, there is a non-monetary reason why he cannot collect regular benefits from that state), if he earned sufficient wages to be monetarily eligible for a regular unemployment claim, he cannot receive EUC benefits in Massachusetts. *See* Board of Review Decision 0002 5343 46 (May 1, 2014)<sup>4</sup>. Thus, federal law prohibits the claimant from receiving EUC benefits in Massachusetts, even though he has been determined by Connecticut to be non-monetarily ineligible for benefits in that state.

We make one final observation and legal conclusion. Pursuant to federal law, there is one circumstance in which a claimant who has been determined to be monetarily eligible for a new regular claim in a state may continue to receive EUC benefits on a prior claim. This is commonly referred to as the “State EUC08 Option”<sup>5</sup> and applies only if each of four conditions are met. The conditions are: (1) an individual has been determined to be entitled to EUC with respect to a benefit year, (2) that benefit year has expired, (3) the individual has remaining entitlement to EUC with respect to that benefit year, and (4) the individual would qualify for a new benefit year in which the weekly benefit amount of regular compensation is at least either \$100 or 25 percent less than the individual’s weekly benefit amount in the benefit year during which he is receiving the EUC benefits. As to these requirements, the claimant has met several

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<sup>2</sup> We note here the elementary observation that a benefit rate, benefit year, and benefit credit could not have been established in Connecticut without the claimant being monetarily eligible for a claim.

<sup>3</sup> The definition of an exhaustee for purposes of EUC law incorporates the definition of an exhaustee for purposes of federal “Extended Benefits” (EB). Those definitions are located at 20 C.F.R. § 615.5.

<sup>4</sup> Board of Review Decision 0002 5343 46 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

<sup>5</sup> It is an “option,” because a claimant can choose to stay on the earlier claim and continue to receive EUC benefits, or choose to go on to the new regular unemployment compensation claim.

of them. For example, he was determined to be entitled to EUC benefits in Massachusetts and as of October 7, 2012, he had a remaining entitlement to those benefits. However, he does not meet condition (2) as of October 7, 2012. The benefit year on which the claimant was receiving the EUC benefits began on February 12, 2012, and ended on February 9, 2013. Since that benefit year had not expired, the claimant cannot take advantage of the exception noted above to continue to receive the EUC benefits.

In light of the above, pursuant to federal law, the claimant was not an “exhaustee” as of October 7, 2012, so he was not entitled to receive EUC benefits in Massachusetts. We, therefore, conclude as a matter of law that, although G.L. c. 151A, § 26, does not disqualify the claimant, the review examiner’s initial conclusion that the claimant is disqualified from receiving benefits beginning October 7, 2012, is legally correct, because the claimant cannot receive the EUC benefits, pursuant to the federal Supplemental Appropriation Act of 2008.

The review examiner’s decision is affirmed. The claimant is not eligible to receive benefits in Massachusetts beginning October 7, 2012. The end date of this issue shall be February 9, 2013. The claimant has been overpaid EUC benefits for that period of time and must repay those benefits to the DUA.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 17, 2015**



Paul T. Fitzgerald, Esq.  
Chairman



Judith M. Neumann, Esq.  
Member

Member Stephen M. Linsky, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT  
COURT OR TO THE BOSTON MUNICIPAL 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.

SF/rh