

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

**Paul T. Fitzgerald, Esq.**  
**Chairman**  
**Charlene A. Stawicki, Esq.**  
**Member**  
**Michael J. Albano**  
**Member**

**Issue ID: 0017 8677 24**

## **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) that the claimant was at fault for the overpayment of unemployment benefits he received under claim 2015-01. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On December 22, 2017, the agency issued to the claimant a Notice of Fault and Fraud Finding pertaining to an overpayment of unemployment benefits. The claimant appealed and attended the hearing. In a decision rendered on March 13, 2018, the review examiner affirmed the agency's determination, concluding that the claimant was at fault for the overpayment he received under claim 2015-01, pursuant to G.L. c. 151A, § 69(a). The Board accepted the claimant's application for review.

### **Ruling of the Board**

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision that the claimant was at fault is based on substantial evidence, and we affirm it. However, we do so under different reasoning, as explained below. We note that the difference between the review examiner's reasoning and ours does not affect the claimant's substantial rights, as he remains ineligible for benefits.

In her conclusion, the review examiner stated that the claimant "intentionally and deliberately" provided inaccurate information to the DUA about his employment status and receipt of income and, therefore, was at fault for the resultant overpayment of benefits he received from the agency. However, the review examiner also found that the claimant assumed that if he was doing temporary work for fewer than 40 hours, he could collect unemployment benefits without reporting any of his hours to the DUA. The review examiner's conclusion that the claimant acted intentionally is not supported by this finding, as the finding indicates that the claimant misreported his hours and earnings because of a mistaken belief. Given this contradiction, we must disagree with the review examiner's reasoning for finding fault in this case.

DUA regulation 430 CMR 4.23 provides the framework under which to interpret the standard for fault in an overpayment case set forth in G.L. c. 151A, § 69(a). The relevant inquiry presented in the regulation is whether the overpayment resulted from (a) the individual furnishing information

which he or she knew, or should have known, to be incorrect or (b) the individual failed to furnish information which he or she knew, or should have known, to be material. The review examiner found that the claimant assumed he did not have to report his hours and earnings given the type of work he was performing. However, she also found that the weekly certification questions the claimant answered in order to collect benefits asked whether, during the week at issue, the claimant performed full-time, part-time, or temporary work, and whether he received income. Given the specific and unequivocal nature of the certification questions, whatever mistaken belief the claimant had about what he needed to report to the DUA should have been called into question. Thus, given the totality of the information the claimant had available to him when he certified for benefits during the weeks at issue, the claimant *should have known* that the information he was providing regarding his employment status and income was incorrect. In light of the foregoing, we conclude that the claimant was at fault for the overpayment he received.

The review examiner's decision is affirmed.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 31, 2018**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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.

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.

**\* To locate the nearest Massachusetts District Court, see:**  
**[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)**