

Board of Review  
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Issue ID: 0020 9766 29

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The employer appeals a decision by Joan Berube, a review examiner of the Department of Unemployment Assistance (DUA), which concluded that the employer failed to respond to a DUA fact-finding questionnaire. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm in part and reverse in part.

On January 31, 2017, the DUA issued the employer a questionnaire in connection with a claim filed by one of its former employees. The DUA never received a response to the questionnaire. On February 8, 2017, the DUA determined that the employer's response to the questionnaire was inadequate and/or late. The employer appealed the determination and attended the hearing via telephone. In a decision rendered on April 6, 2017, the review examiner affirmed the agency's initial determination, concluding that the employer failed to respond timely or adequately to a request for information, pursuant to G.L. c. 151A, § 38A. The Board accepts the employer'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 employer's appeal, we adopt the review examiner's findings of fact and deem them to be supported by substantial and credible evidence in the record. We further conclude that the review examiner's conclusion that the employer was at fault for failing to respond to the request for information is free from any error of law affecting substantive rights. However, the disposition noted in the final sentence of Part III and in Part IV of the review examiner's decision does contain a legal error.

G.L. c. 151A, § 38A provides, in relevant part:

“(a) If the director, or the director's authorized representative, determines, after providing written or electronic notice to the employer, that a payment of benefits was made because the employing unit, or an agent of the employing unit, was at fault for failing to respond timely or adequately to any request of the department for information relating to the claim for benefits, then: (i) the employing unit, except for employing units making payments into the Unemployment Compensation Fund under section 14A, **shall not be relieved of charges on account of any such payment of benefits**; and (ii) if the employing unit makes

payments into the Fund under section 14A, it shall not be relieved from reimbursing the fund on account of any such payment of benefits. For purposes of this subsection, a response shall be considered inadequate if it fails to provide sufficient facts to enable the department to make the proper determination regarding a claim for benefits. A response shall not be considered inadequate if the department fails to ask for all necessary information, except in any case where there has been a failure to respond.” (Emphasis added)

The review examiner concluded that, as a result of the employer’s failure to respond, the employer “has no standing as a party to this matter” and “shall not be a party to further proceedings relating to the allowance of the claim.” However, as set forth in the above-highlighted section of the statute, the penalty for not providing timely or adequately information under this section of the law is only that the employer shall not be relieved of charges on account of any payment of benefits on the claim. The penalty does not include denying party status to the employer. Therefore, the only penalty that may be imposed is that the employer will not be relieved of charges in the event that the claimant is overpaid any benefits.

We conclude that the employer was at fault for failing to respond timely or adequately to a request of the department for information relating to the claim for benefits, within the meaning of G.L. c. 151A, § 38A.

The portion of the review examiner's decision that disqualifies the employer from being a party in further proceedings is reversed. The employer shall remain an interested party. However, the employer shall not be relieved of charges on this claim, pursuant to the provisions of G.L. c. 151A, § 38A.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – May 25, 2017**



Judith M. Neumann, Esq.  
Member



Charlene A. Stawicki, Esq.  
Member

Chairman Paul T. Fitzgerald, 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.

JRK/rh