

**Upheld fault determination for 1 week that claimant certified for while on vacation in the Bahamas. Reversed 2 other weeks, because she was in the U.S. a majority of the weeks.**

**Board of Review  
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Member  
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**Issue ID: 0023 8100 98**

## **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, which she received for the weeks ending September 30, 2017, October 7, 2017, and October 14, 2017. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On December 1, 2017, the agency issued to the claimant a Notice of Fault Finding pertaining to an overpayment of unemployment benefits. The claimant appealed the determination and attended the hearing. In a decision rendered on May 4, 2018, the review examiner affirmed the agency's fault determination, concluding that the claimant was at fault for the overpayment that she received for the weeks ending September 30, 2017, October 7, 2017, and October 14, 2017, as meant under G.L. c. 151A, § 69(a). The Board accepted the claimant's application for review.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant knowingly misrepresented the material fact that she was available for work for the three benefit weeks ending September 30, 2017, October 7, 2017, and October 14, 2017, is supported by substantial and credible evidence and is free from error of law.

### **Findings of Fact**

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

1. The claimant received the Guide to Benefits, which states on Page 11 in relevant part, "You are not eligible for benefits for any period of time you are outside of the United States, its territories or Canada; you should not request benefits for that time," and further explains that federal law prohibits states from accepting claims from overseas.

2. The claimant established no pattern of when during the week she certified for unemployment benefits.
3. The claimant took a vacation in the Bahamas from September 30, 2017 to October 10, 2017.
4. On October 2, 2017, the claimant certified her unemployment for the week of September 24–30, 2017 that [sic] was capable, was available and she looked for work.
5. On October 14, 2017, the claimant certified her unemployment for the week of October 1–7, 2017 that [sic] was capable, was available and she looked for work. The certification asks claimants, “Please review your responses for the **week of Sunday, 10/1/17 through Saturday, 10/7/17.**” The claimant certified that she performed work search activities on four days during the week.
6. On October 16, 2017, the claimant certified her unemployment for the week of October 8–14, 2017 that [sic] was capable, was available and she looked for work. The certification asks claimants, “Please review your responses for the **week of Sunday, 10/8/17 through Saturday, 10/14/17.**” The claimant certified that she performed work search activities on three days during the week.

[Credibility Assessment:]

The claimant testified that she did not even intend to certify for the one week of October 1-7, 2017 because she clearly knew that she was unavailable during that week while in the Bahamas. Yet, the claimant certified her unemployment for that week on October 14, 2017. The certification process clearly draws the claimant’s attention to the week being certified and the claimant further indicated that she looked for work on four days during that week. The claimant stated that she believed it was Sunday and she was certifying for the week of October 8–14, 2017, but the claimant certified two days later for that very week indicating that she looked for work on, not four, but three days that week. If the claimant truly mistook the day of certification (Saturday versus Sunday) for the week purportedly intended (week ending October 14, 2017), the number of work search days should not be different for the “intended” week when compared to the certification occurring two days later for the same week.

The claimant also testified that she called around October 23 or 24, 2017 and discussed her error, but no record exists of such a call. Given the circumstances, the claimant’s testimony was not found credible regarding her intent on one of the weeks. Therefore, it is found that the claimant knowingly misrepresented material fact.

### 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 knowingly failed to furnish accurate information when she requested benefits for the week ending October 7, 2017, is based on substantial evidence, and we affirm it. However, we disagree with the review examiner's conclusion that, because the claimant failed to furnish accurate information for the week ending October 7, 2017, she knowingly misrepresented material facts also for the two weeks ending September 30, 2017, and October 14, 2017.

Finding of Fact # 3 indicates that the claimant was not available for work during the entire week ending October 7, 2017, because she was on vacation in the Bahamas. However, because the claimant left the United States on September 30<sup>th</sup>, a Saturday, and returned on October 10<sup>th</sup>, a Tuesday, she was in the United States for the majority (at least four days each week) of each of the two weeks ending September 30, 2017, and October 14, 2017. Given these travel dates, there is no basis to conclude that the claimant was not available for work during the majority of those weeks. Therefore, we cannot conclude that she knowingly provided inaccurate information to the DUA about her availability in the United States when she certified for benefits for these two weeks.

We, therefore, conclude as a matter of law that the claimant knowingly provided false information concerning the material fact of her availability for work, within the meaning of G.L. c. 151A, § 69(a) and 430 CMR 4.23, during the single week ending October 7, 2018.

We affirm the part of the review examiner's decision that found the claimant at fault for the overpayment she received during the week ending October 7, 2018, and we reverse the part of the decision that found the claimant at fault for the overpayment she received during the weeks ending September 30, 2017, and October 14, 2017.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 15, 2018**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
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.

SVL/rh