

**Board of Review
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**Paul T. Fitzgerald, Esq.
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Member
Michael J. Albano
Member**

Issue ID: 0026 5683 95

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 award the claimant benefits pursuant to the provisions of G.L. c. 151A, §§ 29 and 1. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On August 7, 2018, the agency initially determined that the claimant was entitled to unemployment benefits. However, the Notice of Disqualification stated that the claimant had incorrectly reported earnings for three specific weeks. Thus, he was overpaid some unemployment benefits. The claimant appealed, and only the claimant attended the hearing. In a decision rendered on October 17, 2018, the review examiner modified the agency's initial determination, including the amount of the overpayment. Although the review examiner concluded that the claimant was generally eligible for benefits pursuant to G.L. c. 151A, §§ 29 and 1, the specific earnings for each week at issue were updated and the amount of the overpayment increased. The Board accepts 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 is based on substantial evidence and is free from any error of law affecting substantive rights.

In his appeal to the Board, the claimant argues that he was entitled to benefits for the week ending February 10, 2018, and, therefore, he should not be overpaid for that week. Indeed, the review examiner noted in his decision that the claimant should receive benefits for that week, pursuant to G.L. c. 151A, §§ 29 and 1. However, the findings of fact show that the week ending February 10, 2018, was the first week of the claimant's unemployment claim in which he was eligible for any benefits. In each prior week of the claim, he earned over his benefit rate. Pursuant to G.L. c. 151A, § 23(a), in order for a claimant to receive benefits, he must first serve a waiting period. The "waiting period shall consist of one week of total or partial unemployment." Because the claimant was not in unemployment prior to the week ending February 10, 2018, the week ending February 10, 2018, must serve as his wait week. Consequently, any benefits that were previously paid for that week are now overpaid.

The review examiner's decision is affirmed.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 16, 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.

To locate the nearest Massachusetts District Court, see:
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