

Recovery of the overpaid benefits would defeat the purpose of benefits otherwise authorized because the claimant's monthly expenses exceed his monthly income after taxes.

**Board of Review
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Issue ID: 028 2398 81

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 the claimant a waiver of recovery of overpaid unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant requested a waiver of recovery of overpaid benefits, which was denied in a determination issued on December 11, 2018. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant via telephone, the review examiner affirmed the agency's initial determination and denied the waiver in a decision rendered on March 6, 2019. We accepted the claimant's application for review.

The review examiner denied the waiver on the grounds that recovery of the overpaid benefits would neither defeat the purpose of benefits otherwise authorized nor be against equity or good conscience pursuant to G.L. c. 151A, § 69(c), and 430 CMR 6.00. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to make subsidiary findings from the existing record. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon a review of the entire record.

The issue before the Board is whether the review examiner's decision to deny the waiver of the recovery of \$630.00, because recovery would not defeat the purposes of benefits otherwise authorized or be against equity and good conscience, was based on substantial and credible evidence and free from error of law.

Findings of Fact

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

1. The erroneous overpayment of benefits occurred as the result of a redetermination within Section 25(e)(1) of the Law sent to the claimant on December 11, 2018. The claimant accepted benefits from the DUA believing

he was entitled to them. He was determined to be overpaid in the amount of \$630.00.

2. The claimant is single with no dependents.
3. The claimant works as a Community Coordinator for a social services agency. He works full-time and earns gross wages of \$1,120 per two-week pay period. His net pay per two-week pay period is \$872.70. The claimant is paid biweekly. The claimant's weekly gross pay using 4.35 weeks a month results in average gross monthly pay of \$2,436.00.
4. The claimant has \$249 in a bank account.
5. The claimant owns a 2012 Lincoln MK2 in good condition. Its value is approximately \$10,000.
6. The claimant lives with his mother and brother. They share household expenses.
7. The claimant's portion of his family's [sic] monthly expenses are as follows:

Rent	400
Food	150
Household supplies	15
Toiletries	20
Utilities (includes cell phone)	449
Work Related Travel	87
Payroll Tax	538
Automobile Insurance	242
Automobile loan	341
Credit card payments	300
Total	\$2,542.00

8. The claimant owes \$2,000 in credit card bills. He owes approximately \$11,000 in deferred student loans.
9. It is not known how much he owes on his car loan.
10. The claimant used his unemployment benefits, now determined to be overpaid, to pay ordinary living monthly bills and expenses.
11. The claimant did not give up any right to other rights or benefits when he collected unemployment benefits.

Credibility Assessment:

The claimant's testimony regarding his income and expenses, except his testimony regarding his work related travel expenses, is supported by statements, bills and receipts in the record, as well as a note from his mother, and is considered credible. With regard to the claimant's work related travel expense: The claimant works in [Town A] and lives in [Town B], a distance of 12 miles each way of 24 miles round trip (bing.com). This results in 120 miles each five-day work week. It is noted that no testimony was taken at the hearing about the claimant's use of his car during work hours. He owns a 2012 Lincoln MKZ which, at worst, gets 17 miles per gallon (bing.com). The average current price of gasoline is \$2.84/gal (AAA.com). This results in a work related travel calculation of \$20 each week or \$87 each month.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the review examiner's decision to determine: (1) whether the consolidated findings of fact are supported by substantial and credible evidence; and (2) whether the original conclusion that the claimant is not entitled to an overpayment waiver is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we conclude that the totality of the findings and evidence in the record supports a waiver of the recovery of the overpayment of benefits.

The claimant was denied a waiver under G.L. c. 151A, § 69(c), which provides, in relevant part, as follows:

The commissioner may waive recovery of an overpayment made to any individual, who, in the judgment of the commissioner, is without fault and where, in the judgment of the commissioner such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience.

Under G.L. c. 151A, § 69(c), if the claimant erroneously received unemployment benefits without fault, it is his burden to establish either that the recovery of such benefits would defeat the purpose of benefits otherwise authorized or be against equity and good conscience. Here, the review examiner found that the claimant was not at fault for the overpayment, and nothing in the record indicates otherwise. However, the examiner denied the claimant's request for a waiver, concluding that recovery of the overpayment would not be against equity and good conscience or defeat the purpose of benefits otherwise authorized.

The regulations at 430 CMR 6.03 define the phrase "against equity and good conscience" as being "inequitable if an overpaid claimant, by reason of the overpayment, relinquished a valuable right or changed his or her position for the worse." Because there is nothing in the record to suggest that the claimant relinquished a valuable right (such as a denial of any public benefits to which he otherwise would have been entitled) or that he changed his position for the worse (such as by entering into a long-term financial commitment) by originally accepting the benefits, it cannot be concluded that recovery of the overpayment would be against equity and good conscience.

The same regulation further defines the phrase “defeat the purposes of benefits otherwise authorized” to mean that the “recovery of the overpayment would deprive the overpaid claimant, or individuals dependent on the claimant, of income required for ordinary and necessary living expenses.” Although the review examiner originally concluded that the claimant’s regular monthly income exceeded his ordinary and necessary monthly living expenses, the calculations he used were not supported by the record. After remand, the review examiner’s consolidated findings of fact now show that the claimant’s regular monthly income exceeded his ordinary and necessary monthly living expenses.

We, therefore, conclude as a matter of law that recovery of the overpaid benefits would defeat the purpose of benefits otherwise authorized, although it would not be against equity and good conscience, pursuant to G.L. c. 151A, § 69(c).

The review examiner’s decision is reversed. The claimant’s request for a waiver of recovery of overpaid benefits is granted. The claimant is not liable to repay \$630 in overpaid benefits.

BOSTON, MASSACHUSETTS
DATE OF DECISION – June 28, 2019



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

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