

**Board of Review  
19 Staniford St.  
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: 0032 8243 70**

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 benefits during the benefit year of his 2019-01 claim. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm but clarify the number of weeks subject to a compensable week disqualification.

The claimant filed is 2019-01 claim, effective April 14, 2019, and was approved for benefits. However, on November 27, 2019, the agency issued a Notice of Fault and Fraud Finding, disqualifying the claimant from receiving benefits for the next nine weeks that he was eligible for benefits. The claimant appealed and attended the hearing. In a decision rendered on October 21, 2020, the review examiner affirmed the agency determination, concluding that the claimant knowingly provided false information about his earnings to the DUA. As a result, the claimant was disqualified from receiving benefits and subject to penalties under G.L. c. 151A, § 69. Because the decision did not address the number of weeks subject to a compensable week disqualification, the DUA's nine-week disqualification pursuant to G.L. c. 151A, § 25(j), remained in effect. The Board accepted the claimant's application for review.

Findings of Fact

1. The claimant filed a claim for unemployment benefits on 04/17/19 effective 04/14/19 and began receiving unemployment benefits.
2. In July 2019, the claimant worked briefly for [Employer A]. The claimant did not report to DUA that he had returned to work and he continued to certify that he had zero earnings, aware that this information was not true.
3. On 08/26/19, the claimant began full-time employment with [Employer B]. The claimant again failed to report to DUA that he had returned to work, and he again certified that he had zero earnings, aware that this information was not true.
4. These two employer's reported wages to the Department of Revenue and DUA was notified and an investigation was begun.

5. Eventually the claimant admitted that he had failed to report his employment and earnings to DUA as required because he was having difficulty meeting his household expenses. The claimant stated that his children were starting school again and he needed more money than he was earning to meet his family expenses.
6. Due to the claimant's decision to intentionally provide false information to DUA, he was overpaid during eleven weeks of this claim and he was paid thousands of dollars from the unemployment fund that he knew he was not entitled to receive.
7. On 11/27/19, the claimant was sent a Notice of Fault and Fraud Finding. This Notice informed the claimant that he was being subjected to penalties for his fraudulent behavior towards DUA that had caused substantial overpayments.
8. The penalties included a 12% interest charge on the unpaid debt and a 9 compensable week penalty imposed during his most recent unemployment claim (effective 04/12/20).
9. The claimant requested a hearing on the 11/27/19 Fault Fraud Finding. The claimant did not dispute that he had committed fraud, but he believed the penalties imposed were too harsh.
10. As of the date of the hearing, the claimant's case has not been referred to the Attorney General for further action.
11. The claimant's case has been referred to the Department of Revenue for possible tax intercept action in the future.

### 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 to the DUA is based on substantial evidence and is free from any error of law affecting substantive rights.

However, during the hearing and in his appeal, the claimant asserted that he submitted false information only for four weeks during his 2019-01 benefit year, not nine weeks, and, therefore, should be subject only to a four-week compensable week disqualification. We agree.

The record includes reported earnings for the weeks ending August 31, 2019, September 7, 2019, and September 14, 2019, which he failed to report when certifying for benefits.<sup>1</sup> Additionally, the

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<sup>1</sup> See Finding of Fact # 3 and Exhibit 5, a completed DUA fact-finding questionnaire from the claimant's employer reporting earnings for these weeks. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

claimant admitted to working for a different employer and not reporting those earnings during the week ending July 27, 2019.<sup>2</sup> Pursuant to G.L. c. 151A, § 25(j), the claimant is subject to a compensable week disqualification for these four weeks. Because we see no evidence or indication in the DUA's records that the claimant fraudulently collected benefits during any other weeks of the claim, he is subject only to a four-week compensable week disqualification.

The review examiner's decision is affirmed. The claimant is denied benefits for the weeks ending July 27, 2019, August 31, 2019, September 7, 2019, and September 14, 2019. He must repay those benefits. The overpayment amount is subject to interest and penalties pursuant to G.L. c. 151A, § 69, as well as the four-week compensable week disqualification required by G.L. c. 151A, § 25(j).



**BOSTON, MASSACHUSETTS**

Paul T. Fitzgerald, Esq.  
Chairman

**DATE OF DECISION - November 24, 2020**



Michael J. Albano  
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS  
STATE DISTRICT 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.

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<sup>2</sup> See Finding of Fact # 3. This is corroborated in the DUA's UI Online database, as this employer has reported \$240 in wages paid to the claimant during the third quarter of 2019.

AB/rh