

The claimant correctly reported that she did not have any earnings during the period between April 19, 2020, and August 1, 2020. Because the claimant did not knowingly submit false information, she is not subject to interest charges or penalties on the overpaid benefits under G.L. c. 151A, § 69(a) or (e).

**Board of Review
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Issue ID: 0073 1263 87

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to assess interest and penalties on overpaid unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with the DUA, effective April 19, 2020, which was approved. Subsequently, the DUA issued a Notice of Disqualification, concluding that the claimant was overpaid benefits in the total amount of \$4,278.00 for the period between April 19, 2020, and August 1, 2020 (Issue ID # 0046 2500 52). The present case arises from a separate DUA determination, a Notice of Fault and Fraud Finding, issued on September 29, 2021, in which the agency imposed a one-time penalty assessment of 15% of the overpayment amount, a separate 12% interest penalty on any remaining balance of overpaid benefits, and a compensable week disqualification. The claimant appealed this September 29, 2021, determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's determination and upheld the assessment of interest and penalties in a decision rendered on December 14, 2022. We accepted the claimant's application for review.

The assessment of interest and penalties was based upon the review examiner's conclusion that the claimant's overpayment was due to "fraud," and, thus, she was subject to such penalties pursuant to G.L. c. 151A, §§ 69(a) and (e). 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 obtain further evidence pertaining to the claimant's earnings during the period at issue and her understanding of the requirements of the claims process. The claimant attended the remand hearing, and, thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's original decision, which concluded that the claimant was at fault for the overpayment at issue because she misrepresented her employment status during the period between April 19, 2020, and August 1, 2020, is supported by substantial and credible evidence and is 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. On 8/01/2014, the claimant began employment as a part-time Cleaner for the employer [Employer]. The claimant worked at the [Location] job site location.
2. In March of 2020, the claimant stopped working for the employer after her 3/27/20 shift. The claimant chose to stop work to limit her contact with people during [COVID]-19. The claimant did not return to work for the employer until August 4, 2020.
3. The employer issues paychecks each week on Thursdays, for the previous week.
4. The employer's Historical Payroll Register for the claimant dated 4/02/20 notes 20.93 current hours of regular pay in the amount of \$421.74 plus MA PFML REIM of \$1.60 for a total gross payment of \$423.34.
5. The employer's Historical Payroll Register for the claimant dated 4/09/20 notes 20 current hours of sick pay in the amount of \$403.00 plus MA PFML REIM of \$1.53 for total gross payment of \$404.53.
6. The employer's Historical Payroll Register for the claimant dated 4/16/20 notes 0 hours and \$0 payment.
7. The employer's Historical Payroll Register for the claimant dated 4/23/20 notes 16 current hours of vacation pay in the amount of \$322.40 plus MA PFML REIM of \$1.22 for total gross payment of \$323.62.
8. The employer's Historical Payroll Register for the claimant dated 8/13/20 notes 16.41 current hours of regular pay in the amount of \$387.89 plus MA PFML REIM of \$1.47 for total gross payment of \$389.36.
9. On 4/22/20 the claimant filed a claim for unemployment benefits effective 4/19/20 and she began receiving unemployment benefits with a weekly benefit rate of \$376.00 and a weekly earnings disregard amount of \$125.33.
10. This was the claimant's first and only unemployment claim.
11. The Massachusetts Department of Revenue (DOR) notified DUA that the employer was reporting earnings for the claimant for weeks the claimant was reporting zero earnings.
12. The claimant did not work or receive any wages from the instant employer during the 13-week period between April 19, 2020, and August 1, 2020.

13. The claimant did receive a gross payment of \$389.36 from the employer on April 23, 2020 for vacation pay in the amount of \$322.40 plus MA PFML REIM of \$1.22.
14. The employer provided DUA a wage data report showing the claimant's 2021 weekly and quarterly wages. The wage data report did not show the claimant's 2020 wages or contain any information pertaining to the claimant's wages during the period between April 19, 2020 through August 1, 2020.
15. The wage data report notes an original hire date of 8/01/2014 and a current hire date of 4/19/20 for the claimant.
16. The claimant's 2020 W-2 tax document shows total gross wages from [Employer] in the amount of \$16,258.00.
17. On 9/29/21 the claimant was sent a determination noting that she had not been accurately reporting her weekly earnings from this employer. This Earnings determination was not appealed and became final.
18. On 9/29/21 the claimant was sent a Notice of Fault and Fraud Finding under Sections 69 (a) and 25 (j) of the law.
19. This Notice informed the claimant that she had been overpaid unemployment benefits because she gave information that she either knew or reasonably should have known was inaccurate, or because she could have given information, but did not, that she knew or reasonably should have known would be considered important in deciding whether to pay her benefits.
20. The claimant requested a hearing on Notice of Fault Finding.

Credibility Assessment:

During the weeks at issue, the claimant was not working or being paid any wages. This was the claimant's first and only unemployment claim and she was learning to navigate the unemployment system in a second language. Although the claimant was paid vacation and sick pay earnings and failed to properly report these earnings, the claimant's testimony that this was a good faith mistake and not done to intentionally obtain benefits to which she was not entitled is credible.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. There appears to be a typographical error in Consolidated Finding # 12, which states that the claimant did not have any wages during the 13-week period between April 19, 2020, and

August 1, 2020. While the claimant was found overpaid in thirteen weeks during the period between April 19, 2020, and August 1, 2020, there were a total of 15 weeks between those two dates. Accordingly, we believe the review examiner intended to find consistent with the record that the claimant did not have any earnings from the employer during this 15-week period. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is subject to any penalties under G.L. c. 151A, § 69.

The review examiner issued her decision pursuant to the following provisions under G.L. c. 151A, § 69:

(a) The department may recover . . . any amounts paid to an individual through error, . . . If any individual fails to pay when due any amount paid to said individual because of such individual's *failure knowingly to furnish accurate information concerning any material fact*, including amounts of remuneration received, as provided in subsection (c) of section twenty-four, such overdue amounts shall carry interest at a per annum rate provided by subsection (a) of section fifteen from the due date until paid. The total amount of interest assessed shall not exceed fifty percent of the total amount due.

...

(e) At the time the department determines that an erroneous payment from the Unemployment Compensation Fund was made to an individual due to the individual's *misrepresentation of a material fact or failure to disclose a material fact that the individual knew, or reasonably should have known, was material*, the individual shall be assessed a penalty equal to 15 per cent of the amount of the erroneous payment

(Emphasis added.)

The DUA regulations at 430 CMR 4.23, define the phrase "failure knowingly to furnish accurate information" in G.L. c. 151A, § 69(a), to mean that the overpayment resulted from information which the individual knew, or should have known, to be incorrect, or a failure to furnish information which she knew, or should have known, to be material.

Thus, in considering whether the overpayment on the claim effective April 19, 2020, warrants an interest charge under G.L. c. 151A, § 69(a), or a 15% assessment penalty under G.L. c. 151A, § 69(e), the standard is essentially the same. We must decide whether the claimant knew, or reasonably should have known, that she was furnishing false information.

The claimant did not have any earnings during the 15-week period between April 19, 2020, and August 1, 2020. Consolidated Finding # 12. The claimant did receive remuneration in the weeks prior to the effective date of her claim, and for the week of August 2, 2020. *See Consolidated Findings ## 3–8.* However, her earnings during those weeks are not relevant to the overpayment at issue. As the claimant accurately reported to the DUA that she did not have any earnings during weeks between April 19, 2020, and August 1, 2020, the review examiner erred in concluding that

the claimant knew, or reasonably should have known, that she was furnishing false information on her weekly certifications during that period.

We, therefore, conclude as a matter of law that the claimant did not knowingly fail to furnish accurate information to the DUA within the meaning of G.L. c. 151A, § 69(a). We further conclude as a matter of law that the erroneous payments from the Unemployment Compensation Fund were not due to submissions or omissions, which the claimant knew or should have known were misrepresentations of material fact within the meaning of G.L. c. 151A, § 69(e).

The review examiner's decision is reversed. The claimant remains obligated to return the overpaid benefits in the amount of \$4,278.00. However, the claimant is not required to pay interest on any overdue amount, is not subject to a 15% penalty, and is not subject to a compensable week disqualification.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 25, 2023



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
(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.

LSW/rh