

**The claimant was not eligible for a waiver of overpaid benefits under G.L. c. 151A, § 69(c), where the agency determined that he was at fault for the overpayment.**

**Board of Review  
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Member  
Michael J. Albano  
Member**

**Issue ID: 0076 3332 66**

### 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 overpaid unemployment benefits. The waiver was denied pursuant to G.L. c. 151A, § 69(c), because the claimant was at fault for the overpayment.

The claimant filed a claim for unemployment benefits and became eligible, effective June 28, 2020. On September 15, 2020, the DUA issued a Notice of Disqualification denying the claimant benefits because he was employed full-time (Issue ID #: 0050 8510 07). The DUA determined the claimant was at fault for the overpayment in a Notice of Fault Finding also issued on September 15, 2020 (Issue ID #: 0053 7024 03). On April 14, 2022, the DUA issued a Notice of Disqualification, stating that the claimant was not entitled to an overpayment waiver because the claimant was at fault for the overpayment. The claimant appealed the April 14, 2022, Notice of Disqualification, regarding the overpayment waiver, to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on October 18, 2022. The claimant sought review by the Board, which dismissed the appeal, because he filed it beyond the 30-day appeal deadline under G.L. c. 151A, § 40. The claimant later appealed to the District Court pursuant to G.L. c. 151A, § 42.

On March 14, 2023, the District Court remanded the case to the Board.<sup>1</sup> After reviewing the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, and the District Court's Order, as well as the DUA's electronic record-keeping system, we affirm the review examiner's decision.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was not entitled to an overpayment waiver because of a fault finding, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

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<sup>1</sup> Although the District Court's order to remand indicates that it is for a Board hearing, we believe that the intent of the order was for the Board to review the case on the merits. A hearing before the Board is not necessary, where the record from the hearing before the review examiner contains all of the information necessary for the Board to issue a decision. *See* G.L. c. 151A, § 41.

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

1. On July 8, 2020, the claimant filed a claim for unemployment benefits with an effective date of June 28, 2020.
2. On September 15, 2020, the Department of Unemployment Assistance (DUA) found that the claimant was ineligible from receiving benefits that he was paid for the period beginning June 28, 2020, through August 1, 2020, and further held that the claimant had been overpaid in the amount of \$3,160.00.
3. The DUA further determined that, "because [the claimant] knew, or should have known, the earnings must be reported when you claimed benefits, the overpayment is due to a fault/fraud on your part."
4. The claimant failed to appeal the determination which resulted in the overpayment which, as a result, became final.
5. As a result, the claimant has been charged interest at a rate of 12% per year on his principal overpayment balance in addition to a 15% penalty on the principal balance.
6. On April 11, 2022, DUA received the claimant's request for waiver of recovery of the remaining amount of the overpayment.
7. On April 14, 2022, the DUA issued a Notice of Disqualification under Section 69(c) of the law, which indicated that the waiver request was being denied because "The overpayment resulted from your failure to give information which you know, or should have known was material to the decision to grant your unemployment benefits."
8. The claimant used the unemployment insurance benefits he received to pay rent, medical expenses for his children, and steady monthly living expenses.
9. The claimant did not apply or receive other government assistance when he received the overpayment.
10. The claimant has costs related to his five dependents. He lives in an apartment where four of his dependents reside with him. The claimant pays all household costs.
11. The claimant pays \$1,400 in rent, and \$360 in utilities.
12. The claimant is currently employed as a transportation driver for the city of Boston.
13. His yearly gross wages are \$41,000.

14. The claimant owns a 2004 Honda Civic with an approximate blue book value of \$1,300.
15. The claimant has no monthly car payments.
16. The claimant does not own any real property.
17. The claimant holds no investment accounts and currently has \$0.54 in savings. The claimant's checking account currently has a balance of \$4.60.
18. The claimant pays \$320 per month in cell phone bills.
19. The claimant pays \$173 per month for health insurance.
20. The claimant has no student loans or medical bills.
21. The claimant incurs the following additional average monthly expenses:

Gasoline	\$320
Food	\$500
Clothing	\$250
<b>Total</b>	<b>\$1,070</b>

### 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 findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant was ineligible for a waiver of overpaid benefits.

The claimant's eligibility for a waiver is governed by G.L. c. 151A § 69(c), which provides 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.

(Emphasis added.)

This statutory provision states that overpayments that are the result of fault may not be waived. Findings of Fact ## 2-4 provide that the DUA determined that the overpayment was due to fault on the claimant's part and that, because he did not timely appeal that determination, it became final.<sup>2</sup> Therefore, the review examiner properly concluded that the claimant was not eligible for the waiver because he was at fault for the overpayment.

We therefore conclude, as a matter of law, that the claimant is not entitled to a waiver of the overpaid benefits pursuant to G.L. c. 151A § 69(c).

The review examiner's decision is affirmed. The claimant is not entitled to a waiver of his obligation to repay benefits paid during the period of June 28, 2020, through August 1, 2020.



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 22, 2023**



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](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.

MR/rh

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<sup>2</sup> According to DUA's electronic record-keeping system, UI Online, the claimant appealed the Notice of Fault Finding on January 22, 2021, but his appeal was dismissed because it was submitted after the statutory appeal deadline. See G.L. c. 151A, § 39(b).