

Because the claimant was found to be at fault for the overpayment he received between November 11, 2007 and April 26, 2008, he was not entitled to a waiver of that overpayment under G.L. c. 151A, § 69(c).

**Board of Review
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Issue ID: 0084 5846 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 a waiver of overpaid unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant filed a claim for unemployment benefits with the DUA effective November 4, 2007, and was initially awarded benefits. However, the DUA subsequently determined that these benefits were overpaid in three determinations issued on January 5, 2009. He applied for a waiver of recovery of the overpayment, which the DUA denied in a determination issued on December 27, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's waiver determination and denied the claimant's request for an overpayment waiver in a decision rendered on January 31, 2025. We accepted the claimant's application for review.

The overpayment waiver was denied after the review examiner concluded that the claimant was not eligible for a waiver under G.L. c. 151A, § 69(c), because the agency had concluded that the claimant was at fault for the overpayment. 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 evidence pertaining to the overpayment of benefits the claimant received during his 2007-01 claim. The claimant attended the remand hearing. Thereafter, the review examiner issued her 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 decision, which concluded that the claimant was not entitled to a waiver of the overpayment at issue because he was found to be at fault for the overpayment, 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. The claimant filed an application for Unemployment Assistance (UI) with an effective date of September 15, 2024.
2. The claimant previously collected UI benefits on a 2007 claim with an effective date of November 4, 2007.
3. The funds received by the claimant on his 2007 UI claim were later determined to have been overpaid in the amount of \$5,170.00.
4. The claimant requested UI benefits during the period of November 11, 2007, and April 26, 2008, because he was unemployed.
5. The claimant used the funds that were determined to be overpaid for rent, food, and car insurance.
6. The claimant is relatively certain he was working during the period between November 11, 2007, and April 26, 2008, because he always worked.
7. The claimant is unsure whether he received a check from an employer for wages that he did not report to the DUA while receiving benefits between November 11, 2007, and April 26, 2008, as it was many years ago.
8. The claimant is unaware if he accurately reported wages while certifying for UI benefits between November 11, 2007, and April 26, 2008.
9. The claimant did not relinquish any rights to other benefits while receiving UI during the period of November 11, 2007, and April 26, 2008.
10. A fault/fraud attachment has been placed on the overpaid funds due to the claimant failing to disclose information that he knew, or should have reasonably known, would be important in determining whether the claimant was eligible for UI benefits.
11. The claimant is aware that the overpayment arises from benefits received for the weeks of November 11, 2007, December 2, 2007, and for the period of December 29, 2007, to April 26, 2008.
12. The claimant filed a request for a waiver of the overpayment.
13. The claimant is seeking forgiveness of the interest on the overpaid amount.
14. On December 27, 2024, the claimant was issued a Notice of Disqualification denying the application for waiver of the overpayment under M.G.L. c. 69(c). The claimant appealed the determination.

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. There appears to be a typographical error in Consolidated Finding # 11, which states that a portion of the overpayment at issue covers the period beginning December 29, 2007. As is reflected in DUA records, we believe that the review examiner intended to find that period began December 23, 2007. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. Further, as discussed more fully below, we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant is not entitled to a waiver of the overpayment at issue.

The claimant's eligibility for a waiver is governed by 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.

(Emphasis added.)

The review examiner's original findings of fact discussed an overpayment of benefits for the weeks between September 28, 2007, and December 7, 2007. However, the December 27, 2007, Notice of Disqualification from which the claimant appealed pertained only to the \$5,170.00 in overpaid benefits received by the claimant under his 2007-01 claim during two weeks of November 11, 2007, December 2, 2007, and the eighteen-week period between December 23, 2007, and April 26, 2008. *See* Consolidated Findings ## 3, 4, and 14. Thus, the Board's inquiry is limited to whether recovery of the \$5,170.00 in overpaid benefits should be waived.

In several determinations¹, the DUA found the claimant to be at fault for the overpaid benefits he received during weeks of November 11, 2007, December 2, 2007, and the eighteen-week period between December 23, 2007, and April 26, 2008. Consolidated Finding # 10. As those determinations were not appealed, they have become final.

We, therefore, conclude as a matter of law that recovery of the overpaid benefits may not be waived pursuant to G.L. c. 151A, § 69(c), because he was found to be at fault for the overpayment.

¹ The claimant was determined to be at fault for the overpaid benefits he received during the weeks of November 11, 2007, December 2, 2007, and the eighteen weeks between December 23, 2007, and April 26, 2008, in Issue ID ## 0010 2433 17; 0010 5351 00; 0010 2433 11; 0010 2433 14; 0010 2433 13; 0010 2433 12; 0010 2433 10; 0010 3997 46; 0010 4070 59; 0010 3997 41; 0010 4070 54; 0010 3997 43; 0010 4070 56; 0010 3997 43; 0010 4070 56; 0010 3997 44; 0010 4070 57; 0010 3997 45; 0010 4070 58; 0010 3997 47; 0010 4070 60; 0010 3997 48; 0010 4070 61; 0010 2433 16; 0010 2443 15; 0010 2443 18; 0010 3997 49; 0010 4070 62; 0008 9508 29; 0010 3997 50; and 0010 4070 63.

The review examiner's decision is affirmed. The claimant's request for waiver of recovery of overpaid benefits is denied, and he remains obligated to return the remaining balance on any overpaid benefits as well as all accrued interest and penalties.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 25, 2025



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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