

As the Board has separately affirmed a DUA disqualification and fault determination, the claimant is not entitled to a waiver of her obligation to repay PUA benefits, which was imposed as a result of that disqualification. Because of the fault determination, her waiver is denied pursuant to G.L. c. 151A, § 69(c).

**Board of Review
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**Paul T. Fitzgerald, Esq.
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Issue ID: N6-H8JF-92KM

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 request to waive overpaid Pandemic Unemployment Assistance (PUA) benefits. A waiver of these benefits was denied pursuant to G.L. c. 151A, § 69(c), on the ground that the claimant had been determined to be at fault for the overpaid benefits.

The claimant had filed a claim for PUA benefits, effective March 22, 2020, which was initially approved. However, in a determination issued by the agency on February 24, 2022, the DUA disqualified the claimant for the period June 28, 2020, through March 20, 2021, imposed an obligation to repay benefits, and further determined that the overpaid benefits were the result of fault by the claimant (overpayment determination). Subsequently, the claimant applied for a waiver of the requirement to repay these overpaid benefits. On March 7, 2022, the DUA denied the request for a waiver (overpayment waiver determination). The claimant appealed the overpayment waiver determination to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency’s determination in a decision rendered on June 7, 2022. The claimant sought review by the Board, which dismissed the appeal because it was filed after the statutory appeal deadline set forth under G.L. c. 151A, § 40, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On July 12, 2023, the District Court ordered the Board to “review its decision that [the claimant] was ‘late in appealing under sec. 40.’” We interpret this order to mean that the Judge is directing us to review the claimant’s overpayment waiver appeal on the merits, notwithstanding that she missed the statutory appeal deadline. Consistent with our understanding of this order, we have reviewed the entire record, including the recorded testimony and evidence from the hearing, the review examiner’s decision, the claimant’s appeal, the District Court’s Order, as well as the Board’s decision in the claimant’s separate appeal of the overpayment determination (Issue ID # N6-HJ78-9PRL).

The issue before the Board is whether the review examiner’s decision, which concluded that the claimant was not eligible for an overpayment waiver because the underlying overpayment was determined to be the claimant’s fault, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed an application for Pandemic Unemployment Assistance (PUA) with an effective date of March 22, 2020 and a weekly benefit amount of \$408.00.
2. In a Notice of Overpayment dated February 24, 2022, the claimant was notified of an overpayment on her PUA claim for the weeks ending July 4, 2020 to the week ending March 20, 2021 in the amount of \$23,304.00. The Notice of Overpayment indicated that the overpayment was the result of fault by the claimant and that the overpayment was related to a Potential Claim Eligibility issue on the PUA claim.
3. On March 7, 2022, the claimant was issued a Notice of Overpayment Waiver Determination denying the application for waiver of the overpayment. The claimant appealed the determination.
4. The claimant used the PUA benefits, which have now been determined to be overpaid, to pay her mortgage and purchase personal protection equipment (“PPE”) and supplies against COVID-19.
5. The claimant did not relinquish receiving any other benefits to receive the PUA benefits resulting in the overpayment.
6. The claimant is currently employed as a full-time sous chef working 40 hours per week at the pay rate of \$21.00 per hour, yielding gross wages of approximately \$3,637.20 per month.
7. The claimant is not married and has no dependent children. The claimant lives with a significant other who shares in the monthly household expenses. The significant other earns at least \$600.00 net per month.
8. The claimant owns a 2013 Hyundai Accent. The claimant’s vehicle is paid in full.
9. The claimant has a checking account with a current balance of approximately \$3,000.00 and a savings account with a current balance of approximately \$5,800.00.
10. The claimant’s monthly household costs and expenses are approximately:

Mortgage	\$ 1,300.00
Heating Oil	\$ 105.00
Electric	\$ 200.00
Water/Sewer	\$ 45.00

Gasoline	\$ 140.00
Car Insurance	\$ 29.00
Clothing	\$ 40.00
Food	\$ 800.00
Gym Membership	\$ 10.00
Cell Phones	\$ 92.00
Cable/Internet	\$ 100.00
Credit Cards	\$ 350.00
<u>Student Loans</u>	<u>\$ 110.00</u>
TOTAL	\$ 3,321.00

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 also agree with the review examiner’s legal conclusion that the claimant is not eligible for an overpayment waiver.

The claimant seeks a waiver of overpaid PUA benefits pursuant to 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.)

In this case, the overpayment which the claimant asks the Board to waive was imposed by the DUA’s overpayment determination. Separately, the claimant appealed that overpayment determination and a hearing decision was issued on May 5, 2022, affirming the disqualification and fault determination in Issue ID # N6-HJ78-9PRL. Thus, when the review examiner issued her decision in the present overpayment waiver appeal, a fault determination had been upheld.

The claimant appealed both decisions to the Board. On August 9, 2023, the Board affirmed the review examiner’s decision, which had upheld the disqualification and fault finding in the overpayment determination in Issue ID # N6-HJ78-9PRL. Thus, at this time, the DUA’s imposition of fault on the overpaid benefits is final. Because G.L. c. 151A, § 69(c), prohibits a waiver of the overpayment where it is due to fault, the Board is without authority to waive the claimant’s 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 denied a waiver of her obligation to repay benefits.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 24, 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.

AB/rh