

Board of Review
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Issue ID: 0002 4441 59

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Kristina Gasson, a review examiner of the Department of Unemployment Assistance (DUA), that the claimant was overpaid benefits due to an error without fraudulent intent. We review, pursuant to our authority under G.L. c. 151A, § 41; we affirm in part and reverse in part.

The DUA initially determined that the claimant was entitled to unemployment benefits. However, on May 3, 2013, the agency redetermined the claimant's eligibility, finding that he was not entitled to benefits and was required to return the overpaid benefits, under G.L. c. 151A, § 69(a). The claimant appealed the redetermination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the overpayment in a decision rendered on June 20, 2013. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not meet the requirements of G.L. c. 151A, § 24(b), and, thus, was disqualified. The review examiner also affirmed the overpayment amount of \$3,829.00 and concluded that the overpayment resulted from an error without fraudulent intent. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we took this case for review. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner's conclusion that because the claimant was on bed rest due to an extended illness, he was not capable of, available for, and actively seeking work, under G.L. c. 151A, Section 24(b), and, therefore, overpaid is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed a claim for unemployment benefits on May 8, 2012. The effective date of this claim is May 6, 2012.
2. On November 10, 2012, the claimant was diagnosed with pneumonia and his treating physician ordered him to remain on bed rest until he recovered. The claimant did not seek any further medical assistance or receive medical

clearance to return to work, because he did not have health insurance and could not afford medical care.

3. From November 11, 2012 to January 5, 2013, the claimant remained on bed rest with pneumonia and influenza. The claimant was not physically capable of performing full-time work during this time.
4. From November 11, 2012 to January 5, 2013, the claimant was not available for full-time work due to his illnesses.
5. From November 11, 2012 to January 5, 2013, the claimant conducted an online work search to seek out and apply for jobs, but did not undertake any other work search activities due to his illnesses.
6. During this time, the claimant did not know that he should call the Department of Unemployment Assistance (“DUA”) to notify them of his illnesses. He continued to certify for benefits during the eight weeks ending November 17, 2012 to January 5, 2013 and received seven benefit payments of \$547.00 each during that eight-week period. The claimant did not receive a benefit payment for the week ending December 15, 2012.
7. On May 3, 2013, the DUA sent the claimant a Notice of Redetermination and Overpayment (“Notice”) indicating that in accordance with the provisions of Section 24(b) of the Law, the claimant was disqualified from receiving benefits. The Notice further indicated that as a result, the claimant received benefits to which he was not entitled during the weeks ending November 17, 2012 through January 5, 2013.
8. The Notice stated that the claimant was responsible for returning benefits payments in the amount of \$3,829.00 to the unemployment fund.
9. The Notice stated that the overpayment was due to an error without fraudulent intent and that no interest is charged on the unpaid balance.

Ruling of the Board

In accordance with our statutory obligation, we review the examiner’s decision to determine: (1) whether the findings of fact are supported by substantial and credible evidence; and (2) whether the ultimate conclusion that the claimant is not entitled to benefits and is overpaid is free from error of law. Upon such review and as discussed more fully below, the Board adopts the review examiner’s findings of fact. In adopting the findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner’s conclusion that the claimant is disqualified for the entirety of the eight weeks at issue. Consequently, we are modifying the claimant’s period of disqualification.

G.L. c. 151A, §24(b) provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall . . . (b) Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted

Also relevant in this appeal are G.L. c. 151A, §24(c), G.L. c. 151A, § 69(a), and G.L. c. 151A, § 71.

G.L. c. 151A, §24(c) provides, in pertinent part, as follows:

No individual shall be considered ineligible for benefits because of failure to comply with the provisions of said clause (b) if such failure is due to an illness or disability which occurs during a period of unemployment after he has filed a claim and registered for work, and has been determined to be otherwise eligible; provided, that no work which would have been considered suitable but for such illness or disability was offered to him after he became ill or disabled; provided further, that the exception granted under this paragraph shall apply to three weeks only within a benefit year.

G.L. c. 151A, § 69(a) provides, in pertinent part, as follows:

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...such overdue amount shall carry interest...from the due date until paid.

Under certain circumstances, the DUA may reconsider a determination. G.L. c. 151A, § 71 provides, in relevant part, as follows:

The commissioner may reconsider a determination whenever he finds that (1) an error has occurred in connection therewith; or (2) wages of the claimant pertinent to such determination but not considered in connection therewith have been newly discovered; or (3) benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentation of fact; provided, however, that with respect to (1) and (2) no such redetermination shall be made after one year from the date of the original determination; and provided, further, that with respect to (3) no such redetermination shall be made after four years from the date of the original determination

The review examiner found that between November 11, 2012, and January 5, 2013, the claimant was not physically capable of performing full-time work because he had pneumonia and influenza and was on bed rest per his doctor's orders. The review examiner also found that, due to his illnesses, the claimant limited his work search during this period to an online work search. The claimant received benefits in the amount of \$547.00 during seven of the eight weeks between the weeks ending November 17, 2012, and January 5, 2013; he did not receive benefits for the week ending December 15, 2012. On May 3, 2013, the DUA issued a Notice of Redetermination and Overpayment notice to the claimant, indicating that he was disqualified from the receipt of benefits as he did not meet the requirements of G.L. c. 151A, §24(b). The

notice also indicated that the claimant was overpaid a total of \$3,829.00 between the weeks ending November 17, 2012, and January 5, 2013.

As the claimant was not capable of, available for and actively seeking work between the weeks ending November 17, 2012, and January 5, 2013, due to his illnesses, he did not meet the requirements of G.L. c. 151A, §24(b), during this period. However, since there is no evidence in the record that the claimant was offered any suitable work during the period at issue, pursuant to G.L. c. 151A, §24(c), he is eligible for benefits during three of the weeks in which he was ill, between the weeks ending November 17, 2012, and January 5, 2013. Specifically, we conclude that the claimant is eligible for benefits during the three weeks ending December 22, 2012, December 29, 2012, and January 5, 2013.

The review examiner's decision is affirmed in part and reversed in part. We affirm that part of the decision which concluded that the claimant was not capable of, available for, and actively seeking work during the weeks ending November 17, 2012, through January 5, 2013. We reverse the portion of the decision finding that the claimant was overpaid during all of the seven weeks ending November 17, 2012, through December 8, 2012, and December 22, 2012, through January 5, 2013. Pursuant to G.L. c. 151A, §24(c), the claimant is entitled to benefits during the three weeks ending December 22, 2012, December 29, 2012, and January 5, 2013. The overpayment amount is to be recalculated consistent with this decision.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 10, 2014



Paul T. Fitzgerald, Esq.
Chairman



Judith M. Neumann, Esq.
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS 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.

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.

SVL/rh