



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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MEMBER

**BOARD OF REVIEW
DECISION**

In the matter of:

Appeal number:

BR-123084-OP

CLAIMANT APPELLANT:

EMPLOYING UNIT:

c/o TALX UC eXpress
P.O. Box 283
St, Louis, MO 63166

Hearings Docket

Introduction and Procedural History of this Appeal

The claimant appeals a decision by M. K. Block, a review examiner of the Department of Unemployment Assistance (DUA), that denied the claimant benefits for a four week period while she was on a medical leave of absence from employment, and stated that she was overpaid benefits due to intentional misrepresentation. We review, pursuant to our authority under G.L. c. 151A, § 41. We affirm the decision to deny benefits for the four week period and the overpayment, but reverse the finding of intentional misrepresentation.

The DUA initially determined that the claimant was entitled to unemployment benefits. However, on March 19, 2012, the agency redetermined the claimant's eligibility, finding that she was not entitled to benefits for the seven weeks ending February 18, 2012 through March 31, 2012 and was required to return overpaid benefits in the total amount of \$646.00 under G.L. c. 151A, §§ 69(a) and 71, without interest. The claimant appealed and only the claimant, represented by her attorney, attended the hearing. In a decision rendered on April 19, 2012, the review examiner affirmed the amount of the overpayment, but added what was in effect a finding of intentional misrepresentation.

The Board accepted the claimant's application for review.

Ruling of the Board

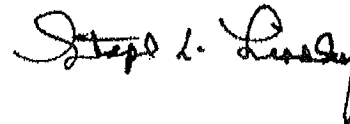
After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the portion of the review examiner's decision that denied benefits to the claimant for a four week period and found her overpaid by \$646.00 is based on substantial evidence and is free from any error of law affecting substantive rights. However, there is no evidence that the overpayment was due to a knowing failure by the claimant to furnish accurate information concerning material facts. Therefore, we reverse that portion of the review examiner's decision that found the claimant had been overpaid due to intentional misrepresentation.

The review examiner's decision is affirmed in part and reversed in part. We affirm the denial of benefits for the weeks ending February 18, 2012 through March 10, 2012, and the overpayment in the amount of \$646.00. We reverse the portion of the decision which found the overpayment due to misrepresentation. The overpayment is not due to intentional misrepresentation or fraudulent intent. The claimant is obligated to repay \$646.00, without interest. The claimant is entitled to benefits for the weeks ending March 17, 2012, and subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF MAILING -- June 7, 2012



John A. King, Esq.
Chairman



Stephen M. Linsky, Esq.
Member

Member Sandor J. Zapolin did not participate in this decision.

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws, Enclosed)

LAST DAY TO FILE AN APPEAL IN COURT -- July 9, 2012