



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LT. GOVERNOR

JOANNE F. GOLDSTEIN
SECRETARY

JOHN A. KING, ESQ.
CHAIRMAN

SANDOR J. ZAPOLIN
MEMBER

STEPHEN M. LINSKY, ESQ.
MEMBER

TO: Wendy Savary, Director, DUA Hearings Department

FROM: John A. King, Esq., Chairman, Board of Review

DATE: November 8, 2012

SUBJECT: Remand for *de novo* hearing

Board of Review Docket Number: **BR-124571-OPW**

Please conduct a *de novo* hearing with a resultant new decision and new appeal rights to the Board of Review.

This action is necessary because in the findings of fact and his decision, the review examiner focused on the wrong section of law and made gratuitous pronouncements about the claimant's veracity which were both entirely unsupported by the record and highly prejudicial. The only issue before him was whether the claimant was entitled to a waiver under G.L. c. 151A, § 69(c) and 430 CMR 6.00-6.15. However, he also rendered a purported conclusion that the overpayment was due to misrepresentation of fact on the part of the claimant. That issue was already addressed by a previous review examiner, pursuant to G.L. c. 151A, §§ 69(a) and 71, and it was, therefore, highly improper for the review examiner to raise it again here.

In addition, the review examiner made numerous findings of fact which are directly contradicted by evidence in the record and the DUA's own administrative record.

These errors interfered with the claimant's right to a fair, independent, and impartial decision.

Kindly notify the parties of the date, time, and location of the new hearing.

SF/lw