



COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
**BOARD OF REVIEW**  
Government Center  
19 Staniford Street  
Boston, MA 02114

Tel. 628-6400  
Office Hours:  
8:45 a.m. to 5:00 p.m.

**DECISION  
OF  
BOARD OF REVIEW**

In the matter of:

Appeal number:

**BR-73926/21970999-CTRM**

**EMPLOYEE APPELLANT:**

██████████  
██  
██

Office # 41

On November 20, 1998, the New Bedford Division of the District Court remanded this case (Court Docket No. 9733 CV 1031) to the Board of Review. In Boston, Massachusetts, on May 20, 1999, the Board reviewed the written record, a transcript and recordings of the testimony presented at hearings held by the Deputy Director's representative on July 9, 1997, and February 18, 1999.

The Board decision of August 25, 1997 denied the claimant's application for review of the Deputy Director's July 9, 1997 decision denying her benefits in accordance with the provisions of section 41 of Chapter 151A of the General Laws, the Massachusetts Employment and Training Law (the Law). The claimant exercised her right of appeal to the courts under Section 42 of the law. The New Bedford District Court remanded the case for findings of fact as to the claimant's immigration status and on the issue whether the overpayment in this case resulted from misrepresentation on the claimant's part. The Board remanded the case to the Deputy Director for the taking of additional evidence and for making consolidated findings of fact.

At the remand hearing, the claimant appeared with her attorney. Upon return to the Board, the case was again remanded to the Deputy Director for further subsidiary findings from the record. After reviewing the record, the Deputy Director returned the case to the Board with consolidated findings on May 5, 1999.

The Board has reviewed the entire case to determine whether the Deputy Director's decision was founded on the evidence in the record and was free from any error of law affecting substantial rights.

The decision of the Deputy Director dated July 9, 1997, concluded that:

During the base period of her claim, the claimant, who is an alien, was not legally permitted to work in the United States.

Therefore, the wages paid to the claimant during the base period of her claim cannot be used to establish a benefit claim.

And as such, the claimant is not monetarily eligible to receive benefits in accordance with Section 25(h) of the Law.

Since the claimant was not eligible to receive benefits, it is found that an error occurred with connection to the payment of such benefits and that the redetermination made under Section 71 of the Law was appropriate. The claimant is overpaid benefits.

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The determination made under Section 25(h) of the Law is affirmed. The claimant is disqualified from receipt of benefits under Section 25(h) of the Law for the week ending April 12, 1997 and for an indefinite number of weeks thereafter.

The redetermination under Section 71 of the Law is affirmed. The claimant is overpaid benefits in the amount of \$122.00 plus \$61.00 in dependency allowances, for each of the 2 weeks ending April 19, 1997 and April 26, 1997.

The claimant is liable for repayment of benefits in the amount of \$366.00.

Sections 25(h), 69(a) and 71 of Chapter 151A of the General Laws are pertinent and provide as follows:

**Section 25.** No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for-

- (h) Any period, after December thirty-first, nineteen hundred and seventy-seven, on the basis of services performed by an alien, unless such alien was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act; provided, that any modifications to the provisions of section 3304(a)(14) of the Federal Unemployment Tax Act which specify other conditions or other effective dates than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be deemed applicable under the provisions of this section.

Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

**Section 69(a)** The department may recover by a civil action any amounts paid to an individual through error, or, in the discretion of the commissioner, the amount erroneously paid may be deducted from any future payments of benefits accruing to an individual under the provisions of this chapter. Any civil action brought pursuant to this subsection shall be commenced within six years from the date of the erroneous payment.

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, including amounts of remuneration received, as provided in subsection(c) of section twenty-four, such overdue amount shall

carry interest at a per annum rate provided by subsection (a) of section fifteen from the due date until paid. The total amount of interest assessed shall not exceed fifty percent of the total amount due.

Section 71. 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; and provided, further, that the time limitations specified above shall not apply with respect to an award of back pay received by an individual for any week in which unemployment benefits were paid to such individual. If the commissioner reconsiders a determination under this section, parties entitled to notice of the original determination shall be afforded an opportunity for an interview before the commissioner or his authorized representative for the purpose of presenting evidence or refuting opposing positions before such a determination can be made.

Federal regulation 8 CFR § 274a.12(a)(1) is also pertinent and provides in part as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) Aliens authorized employment incident to status. Pursuant to the statute or regulatory references cited, the following classes of aliens are authorized to be employed in the United States . . .

(1) An alien who is a lawful permanent resident . . . as evidenced by Form I-151 or Form I-551 issued by the [Immigration and Naturalization] Service. An expiration date on the Form I-551 reflects only that the card must be renewed, not that the individual's work authorization has expired.

The Deputy Director's representative held, and the claimant attended, a hearing on July 9, 1997, and a remand hearing on February 18, 1999. Whereupon, the Deputy Director's representative consolidated his final findings of fact as follows:

- 1. The claimant initiated a new claim for benefits on April 16, 1997.

The base period of that claim was the period beginning April 1, 1996, and ending March 31, 1997.

- 2. During the base period of her claim, the claimant worked for only one employer, Bayside.

During the base period of her claim, the claimant was paid wages as follows:

04/01/96-	07/01/96-	10/01/96-	01/01/97-
<u>06/30/96</u>	<u>09/30/96</u>	<u>12/31/96</u>	<u>03/31/97</u>
0.00	\$1528.75	\$4840.75	\$ 461.45

Based on these wages, it was determined that the claimant was monetarily eligible to receive weekly benefits in the amount of \$122.00, plus \$61.00 in dependency allowances.

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3. The claimant is not a citizen of the United States of America.
4. The claimant is a citizen of the Dominican Republic.
5. The claimant was granted permanent alien resident status on May 21, 1978. She has been legally allowed to work in the United States since that time.
6. The claimant's alien registration card, form I-551, expired in April of 1996.
7. In accordance with 8 CFR, Section 274a.12 of the Law, the expiration date of the Form I-551 reflects only that the card must be renewed, not that the individual's work authorization has expired.
8. On May 20, 1997, the claimant filed an application to renew her expired alien registration card, Form I-551.
9. The claimant initiated a new claim for unemployment benefits during the week ending April 12, 1997. The week ending April 12, 1997 was the claimant's waiting period week. She was thereafter paid unemployment benefits in the amount of \$122.00, plus \$61.00 in dependency allowances, for each of the 2 weeks ending April 19, 1997 and April 26, 1997.
10. Because the claimant had been granted permanent alien resident status in 1978, she believed she was fully authorized to work in the United States. And, because of that, she did not believe any benefits paid to her by the Department of Employment and Training were paid to her incorrectly or that she had provided any false or misleading information to obtain the benefits.
11. When the local office received information from the Immigration and Naturalization Service that the claimant's alien registration card, Form I-551 expired on April 1, 1996, the local office sent a letter to the claimant requesting additional information.

When the claimant failed to reply to their request for information, the local office issued a redetermination under Section 71(3) of the Law that disqualified the claimant from receipt of benefits under Section 25(h) of the Law for the week ending April 12, 1997, and for an indefinite number of weeks thereafter. The redetermination also stated that the claimant had been overpaid benefits in the amount of \$122.00, plus \$61.00 in dependency allowances, for each of the 2 weeks ending April 19, 1997 and April 26, 1997, for a total overpayment in the amount of \$366.00.

The redetermination was mailed to the claimant on June 3, 1997.

The redetermination found that the overpayment resulted from misrepresentation on the part of the claimant.

After reviewing the record, the Board adopts the consolidated findings of fact made by the Deputy Director as being supported by substantial evidence. The Board concludes as follows:

The Board first notes the finding that the claimant has been legally allowed to work in the United States since May 21, 1978, is not a fact, but a conclusion of law. The specific legal issue before the Board is whether the claimant was unauthorized to work in the United States during any part of her base period, April 1, 1996 through March 31, 1997. "Application of law to fact has long been a matter entrusted to the informed judgment of the board of review." Director of Division of Employment Sec. v. Fingerman, 378 Mass. 461, 463-464 (1979). Consequently, the Board is not bound by the conclusion that the claimant has been allowed since May 1978 to work in the United States.

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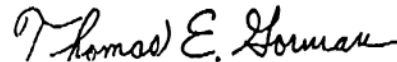
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Section 25(h) of Chapter 151A of the General Laws invalidates claims based on services performed by aliens who are neither explicitly authorized to work nor permanently residing in the United States under the color of law. The claimant's alien registration card, Form I-151, expired during the base period in April 1996. On May 20, 1997, she applied for Form I-551 as a renewal of her expired card. Under 8 CFR § 274a.12(a)(1), cited above, the expiration of Form I-551 would not render its holder unauthorized to work. The INS regulation recognizes both of the above-cited forms as evidencing permanent residence, a status category among those authorized to work. However, the regulation provides that work authorization continues after expiration only of Form I-551. The fact that it so provides for that form, and omits Form I-151 from such continuing authorization establishes that aliens holding expired Form I-151 are not authorized to work. As a holder of Form I-151, the claimant was not authorized to work in the United States when it expired in April 1996. Although the consolidated findings do not indicate the precise date on which that status began, the claimant's lack of any earnings in April 1996 renders such specific information unnecessary. During the ensuing months, when all base period wages were earned, the claimant was not authorized to work.

Nor was the claimant residing under color of law during the base period. Her first attempt to renew her permission to work was over a year after the expiration of her Form I-151. The consolidated findings accurately reflect the absence of evidence that the claimant took any other steps to preserve her work authorization or that the INS acquiesced in the claimant's residing in the United States absent resident status. Therefore, the disqualifying provision under Section 25(h) applies in this case, while the exception for those residing under color of law does not.

Despite the invalidity of the claim, the claimant received \$122 in unemployment benefits and \$61 in dependency allowance in each of the two weeks ending April 19, 1997, and April 26, 1997. Therefore, the redetermination, issued on June 3, 1997, under section 71, finding the claimant overpaid \$366 was proper, though flawed. The claimant did not deliberately give false or misleading information while claiming benefits. Therefore, the imposition of interest on the overpaid funds under Section 69(a) was improper.

The Board affirms the Deputy Director's decision in part and modifies it in part. Benefits are denied for the week ending April 12, 1997, and all ensuing weeks in the benefit year of this claim. The redetermination issued in this case was proper in its finding the claimant overpaid, but improperly imposed interest charges. The claimant is liable for the return of \$366 but will not be charged interest thereon.



Thomas E. Gorman  
Member

BOSTON, MASSACHUSETTS  
DATE OF MAILING - JUN 10 1997



Kevin P. Foley  
Member

APPELLANT: I.D. [REDACTED]

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

LAST DAY - JUN 12 1997

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