

**DISTRICT OF COLUMBIA  
OFFICE OF ADMINISTRATIVE HEARINGS**

One Judiciary Square  
441 Fourth Street, NW  
Washington, DC 20001-2714  
TEL: (202) 442-9094  
FAX: (202) 442-4789

L.M.

Appellant/Claimant

v.

DISTRICT OF COLUMBIA DEPARTMENT OF  
EMPLOYMENT SERVICES

Appellee/Agency

Case No.: 2011-DOES-00354

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**FINAL ORDER**

**I. INTRODUCTION**

**A. Summary**

The District of Columbia Department of Employment Services (“DOES”) mailed a Notice of Overpayment (“Overpayment Determination”) to Appellant/Claimant L.M. The Overpayment Determination advised Claimant that he had been paid \$732 in benefits to which he was not entitled due to unreported earnings. Claimant appealed the Determination. The issue on appeal is whether Claimant was overpaid and is liable to repay DOES \$732, pursuant to the District of Columbia Unemployment Compensation Act (“Act”). D.C. Official Code § 51-119(d)(1).

Following a hearing and based on the evidence in the record, I conclude that Claimant was overpaid \$732 in benefits which he is liable to repay. Accordingly, the Overpayment Determination is affirmed.

**B. Proceedings in this Case**

This administrative court issued a Scheduling Order and Notice of In-Person Hearing on February 18, 2011, scheduling the hearing for March 4, 2011, at 10:15 a.m. Because of a clerical error in Claimant's address, I rescheduled the hearing for March 11, 2011, at 1:30 p.m. Claimant represented himself and testified. DOES was represented by Charles Johnson, Claims Examiner. Exhibits 100, 201, 205, 206, 208, 211, and 212 were admitted into evidence at the hearing. In determining the timeliness of the appeal, I considered the certificate of service on the Overpayment Determination, a court record marked for identification as Exhibit 300; the postmark on the envelope in which DOES mailed the Determination to Claimant, a court record marked for identification as Exhibit 300A; this administrative court's file date stamp on the request for appeal, a court record marked for identification as Exhibit 301; and Claimant's testimony concerning the filing of the appeal.

**II. FINDINGS OF FACT**

**A. Timeliness of the Appeal**

DOES certified that it mailed a copy of the Overpayment Determination to Claimant on February 2, 2011. Exhibit 300. Claimant received the Overpayment Determination in an envelope bearing a postmark dated February 7, 2011. Exhibit 300A. Claimant filed his request for appeal with this administrative court on February 16, 2011. Exhibit 301.

## **B. Overpayment**

Claimant first applied for unemployment compensation benefits on June 23, 2006. Exhibit 206. Claimant qualified for benefits of \$219 per week, and an additional allowance of \$25 per week, for a total of \$244 per week. *Id.* Claimant filed claims and received benefits every week, ending on April 20, 2010. *Id.*

DOES paid Claimant unemployment benefits in the total amount of \$732 for the benefit weeks ending April 3, 10, and 17, 2010. Exhibits 206 and 208. In December 2010, DOES conducted a random audit of Claimant's benefit payments, discovered that Claimant was employed, and sent a request to Claimant's employer for wage information for the period December 27, 2009, to April 17, 2010. Exhibit 211. Claimant's employer reported to DOES that it had paid Claimant \$1,210.28 for the benefit weeks ending April 3, 2010, and April 10, 2010, and \$1,142.36 for the benefit weeks ending April 17, 2010, and April 25, 2010. *Id.* Because Claimant was paid bi-weekly, DOES allocated \$605.14 to each of the first two benefit weeks, and \$596.18 to the third benefit week for which Claimant filed claims for benefits.

Claimant had begun working for the employer in the benefit week ending April 3, 2010, but was not actually paid until April 21, 2010. Exhibit 100. Claimant answered "No" to the following question on his claim forms for the benefit weeks ending April 3, 2010, through April 17, 2010: "Did you perform work during week claimed?" Exhibit 212. Claimant did not enter the amount of gross earnings on the forms for any of the above-referenced weeks. *Id.* Claimant stopped filing claims for unemployment benefits after he received his first paycheck on April 21, 2010, and therefore never reported to DOES his earnings for the benefit weeks ending April 3, 2010, to April 17, 2010. When Claimant received the Audit Notice that DOES sent to him on

December 21, 2010, Exhibit 205, he did not respond. DOES thereafter issued the Overpayment Determination. Exhibit 201.

### **III. DISCUSSION AND CONCLUSIONS OF LAW**

#### **A. Timeliness of the Appeal**

Any party may file an appeal from a Claims Examiner's determination within 15 calendar days after the mailing of the determination to the party's last-known address or, in the absence of such mailing, within 15 calendar days of actual delivery of the determination, and the time for filing may be extended for good cause or excusable neglect. D.C. Official Code § 51-111(b) (as amended). The certificate of service on the Overpayment Determination states that it was mailed to Claimant on February 2, 2011. Exhibit 300. Claimant filed an appeal on February 16, 2011. Exhibit 301.

In this jurisdiction, a certificate of service ordinarily may be relied on "to establish the date and fact of mailing," although a certificate of service is not conclusive and may be rebutted by reliable evidence. *Chatterjee v. Mid Atl. Reg'l Council of Carpenters*, 946 A.2d 352, 355 (D.C. 2008); *D.C. Pub. Emp. Relations Bd. v. D.C. Metro. Police Dep't*, 593 A.2d 641, 643 (D.C. 1991) citing *Thomas v. D.C. Dep't of Emp't Servs.*, 490 A.2d 1162, 1164 (D.C. 1985). Claimant provided credible testimony that he received the Overpayment Determination in an envelope postmarked February 7, 2011. I find that Claimant's testimony, corroborated by the envelope, rebuts the date contained in the certificate of service. Therefore, the parties had until February 22, 2011, to file the appeal. Claimant's appeal was timely filed, and jurisdiction is established. D.C. Official Code § 51-111(b).

**B. Overpayment**

In the District of Columbia, generally any unemployed individual who meets certain statutory eligibility requirements is qualified to receive benefits. D.C. Official Code § 51-109. In this instance, the Claims Examiner found that Claimant had been overpaid benefits for the weeks ending April 3, 2010, through April 17, 2010. Exhibit 201. The Claims Examiner issued the Overpayment Determination showing the total amount of overpayment to be \$732. *Id.*

DOES must provide substantial evidence in the record that such overpayment was made in order for this administrative court to uphold the Claims Examiner's Overpayment Determination. *Anthony v. D. C. Dep't of Emp't Servs.*, 485 A.2d 605, 607 (D.C. 1984); *see also Branson v. D.C. Dep't of Emp't Servs.*, 801 A.2d 975, 979 (D.C. 2002). Further, this administrative court must find that the hearing record contains "reliable, probative and substantial evidence" to support its findings of fact and conclusions of law. D.C. Official Code § 2-509(e).

In this case, the Claims Examiner determined that Claimant had been overpaid during the specified benefit weeks because he had "unreported earnings during the weeks the benefits were received." Exhibits 300 and 201. The evidence of record demonstrates that during the weeks ending April 3, 2010, through April 17, 2010, Claimant received gross earnings in the amount of \$1,806.46 from his employer. Exhibit 211.

D.C. Official Code § 51-101(5) provides that:

An individual shall be deemed "unemployed" with respect to any week in which he performs no service and with respect to which no earnings are payable to him *or with respect to any week of less than full-time*

*work if 80% of the earnings payable to him with respect to such week are less than his weekly benefit amount plus \$20.*

(Emphasis added.)

In this matter, DOES established that Claimant's weekly benefit amount was \$244 (\$219 in unemployment benefits and \$25 in Federal Additional Compensation) per week for the benefit weeks ending April 3, 2010, through April 17, 2010. DOES demonstrated that Claimant had earnings in the amounts of \$605.14 per week during the first two weeks of the above-referenced time period, and \$596.18 during the third week.

The evidence DOES presented from its computerized database in this matter, combined with the fact that Claimant did not challenge DOES's evidence regarding wages that were paid to him by his employer, or the amount of unemployment benefits paid to him, or the overpayment amount, meets the "probative and substantial evidence" standard necessary to support DOES's burden of proof that it overpaid Claimant for the benefit weeks ending April 3, 2010, through April 17, 2010. D.C. Official Code § 2-509(e). Although Claimant argued that he did not report the earnings during the weeks in question because he had not yet been paid and knew that if he reported that he was employed, he would likely not be found eligible for benefits, this argument does not explain why Claimant never reported the earnings at all, or attempted to repay the overpayment when it was brought to his attention. The District of Columbia Court of Appeals ("Court of Appeals") has held that DOES's policy of recovering benefits when the initial determination of eligibility is later reversed is a fair policy, the purpose of which "is to ensure that the unemployment compensation fund is not depleted except for valid benefit payments, thus preserving the limited resources of the fund." *Dixon v. D.C. Dep't of Emp't Servs.*, 956 A.2d

683, 683 (D.C. 2008) (internal quotation marks omitted) citing *Campbell v. Labor & Indus. Relations Comm'n*, 907 S.W.2d 246, 250 (Mo. Ct. App. 1995).

Therefore, the Overpayment Determination is affirmed, and Claimant remains liable to repay \$732 to DOES. D.C. Official Code § 51-119(d)(1).

#### **IV. ORDER**

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this 23rd day of March, 2011:

**ORDERED**, that the February 2, 2011, Overpayment Determination of the Claims Examiner holding Appellant/Claimant L.M. liable for an overpayment of unemployment compensation benefits in the amount of \$732, is **AFFIRMED**, and it is further

**ORDERED**, that Appellant/Claimant L.M. is **LIABLE** to repay Appellee/Agency DOES the amount of \$732, and it is further

**ORDERED**, that the appeal rights of any person aggrieved by this Order are stated below.

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Arabella W. Teal  
Administrative Law Judge