Since the employer did not provide written information about how to file for unemployment benefits within 30 days of the claimant's separation, as required under G.L. c. 151A, sec. 62A(g), the claimant is entitled to have his claim pre-dated automatically under G.L. c. 151A, sec. 23(b).

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
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Board of Review letterhead

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Division of Unemployment Assistance (DUA), to deny the claimant's request for a pre-dating of his claim. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from employment on July 1, 2008 and filed for benefits on June 19, 2009. Thereafter, the claimant requested that his claim be pre-dated to July 12, 2008. The request was denied in a determination issued on July 30, 2009. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency's initial determination in a decision rendered on November 20, 2009.

The claimant's request was denied after the review examiner determined that the claimant lacked good cause for the request and, thus, was not entitled to a pre-date under G.L. c. 151A, § 23(b). Our decision is based upon our review of the entire record.

The issue on appeal is whether the employer's failure to provide written instructions for filing an unemployment claim entitled the claimant to have his claim pre-dated.

Findings of Fact

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

1. On a claim for benefits filed on 06/19/09, the claimant requested that his claim be predated to Sunday, 07/12/08. The request was denied and the effective date of the claim was established as Sunday, 06/14/09, in accordance with the provisions of Section 23(b) of the Law and 430 CMR 4.01.

2. On 07/01/08 the claimant was laid off from the employer.

3. At the time of his separation there was a chance that he could be called back to work at the employer.

4. At the time of his separation the claimant was not given any DUA information by the employer.

5. The office manager did tell the claimant that she believed that he had one year to apply for Unemployment.

6. The claimant was aware that the president at the employer did not want separated employees to file for Unemployment.

7. The claimant has previously received Unemployment compensation in 1995 and 1987.

8. The claimant began consulting part time for other employers. Because he was consulting he was not sure if he would be eligible for unemployment.

9. Because of his consulting work, because there was a chance that he could be called back to work at the employer and because he did not want to upset the president, the claimant did not apply for Unemployment.

10. On or about December, 2008 the claimant stopped performing consulting work due to a lack of work.

11. The claimant continued to not want to upset the president at his former employer, and there continued to be the possibility that he would be called back to work there, so he did not apply for unemployment.

12. On or about June, 2009 the claimant was speaking with the office manager who reminded him that he should apply for unemployment before he had been unemployed for a year. At that time he did.

Ruling of the Board

The Board adopts the review examiner's findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

G.L. c. 151A, § 62A(g), requires that a claim be pre-dated when the employer has not provided a separating employee with required information.

> Each employer shall issue to every separated employee, as soon as practicable, but not to exceed 30 days from the last day said employee performed compensable work, written information furnished or approved by said division which shall contain the name and mailing address of the employer, the identification number assigned to the employer by said division, instructions on how to file a claim for unemployment compensation, the address and telephone number of the regional office which serves the recipient, and the telephone number of the teleclaim information line. Delivery is made when an employer provides such information to an employee in person or by mail to the employee's last known address. The waiting period under section 23 for an employee who did not receive the information required by this paragraph and who failed to file timely for benefits, shall be the Sunday of the initial week such employee would have been eligible to receive unemployment compensation. Each employer shall have the burden of demonstrating compliance with the provisions required herein. (Emphasis added.)

The review examiner had no discretion in this matter. Under the DUA's own administrative interpretation of G.L. c. 151A, § 62A(g), if a claimant files his claim more than 30 days after his last day of work and did not receive the written information on how to file a claim that is specified in G.L. c. 151A, § 62A(g), then he is entitled to a pre-date automatically and without further inquiry. *See* Service Representative's Handbook, § 1622(D). In light of the finding of fact that the employer did not provide the claimant with the information specified in the statute and findings which show that nearly a year elapsed between the claimant's layoff and his claim filing, the above-cited language in the statute and the DUA's administrative interpretations require that the claimant's request for a pre-date must be granted. We, therefore, conclude as a matter of law that the claimant is entitled to have his claim pre-dated.

The review examiner's decision is reversed. The effective date of the claim is July 12, 2008.

BOSTON, MASSACHUSETTS
DATE OF MAILING - December 23, 2010

/s/

John A. King, Esq.
Chairman

/s/

Sandor J. Zapolin
Member

/s/

Stephen M. Linsky, Esq.
Member

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 - December 30, 2010

LH/rh

Last Updated (Monday, 19 March 2012)