

Because claimant had successfully certified on UI Online before, not credible that UI Online misled her about how to certify on weeks that she did not. No compelling reason to justify her failure to timely claim benefits under G.L. c. 151A, § 25(a).

**Board of Review
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Issue ID: 0017 5641 05

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by M. Lerner, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits. Benefits were denied on the ground that the claimant did not establish good cause for her failure to claim benefits in a timely manner, pursuant to G.L. c. 151A, § 25(a).

The claimant filed a claim for unemployment benefits on April 29, 2015. The effective date of the claim is April 26, 2015. In a determination rendered on February 10, 2016, the agency denied benefits to the claimant for the weeks ending July 18, 2015, through September 5, 2015. The claimant appealed the determination to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on September 8, 2016. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On May 17, 2017, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning the claimant's weekly claims for unemployment benefits. A remand hearing was scheduled for June 23, 2017, but the claimant did not attend. The claimant subsequently attended a remand hearing on September 11, 2017. Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner's conclusion that the claimant did not have good cause under G.L. c. 151A, § 25(a), for her failure to timely claim benefits is supported by substantial and credible evidence and is free from error of law, where the record before us does not contain any specific circumstances that prevented the claimant from claiming her benefits in a timely manner during the weeks at issue.

After reviewing the entire record, including the recorded testimony and evidence from the hearings, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we affirm the review examiner's decision.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessments, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant had Massachusetts unemployment claims in both 2010 and 2011.
2. On April 29, 2015, the claimant filed her 2015-01 unemployment claim, which was effective April 26, 2015.
3. Claimants may request benefits by logging in to the UI Online accounts or by calling the DUA Telecert line.
4. If a claimant does not request benefits for 2 weeks in a row, their account will automatically become inactive and they will have to reactivate their claim by either logging into their UI Online account or by calling TeleCert or the Teleclaim Center.
5. When a claimant successfully submits a request for benefits online, they will receive a confirmation screen. When a claimant successfully submits a request for benefits through the Telecert line, they will hear a confirmation message.
6. The claimant's home computer was not reliable so she corresponded with DUA by US mail. She usually used her phone to request benefits. If she had trouble, she would come into the Quincy Career Center, where there were computers she could use to certify her claim. There were also staff to assist her if she had a problem with the system.
7. On May 3, 2015, the claimant requested benefits for the week ending May 2, 2015.
8. On June 9, 2015, DUA Issue 0016 2087 42-02 was adjudicated with the result that the claimant was indefinitely eligible on a Remuneration — Vacation or Sick Pay Issue effective April 21, 2015.
9. On June 10, 2015, the present claim was changed from inactive status to active status and then back to inactive status.
10. On June 11, 2015, Issue 0016 2087 42-02 was voided.
11. On June 12, 2015, the present claim was changed from inactive to active and then back to inactive.

12. The claimant reopened her claim on July 8, 2015, effective July 5, 2015. It had been inactive due to the break in signing after May 3, 2015. This reopening resulted in her claim status changing from inactive to active.
13. On July 8, 2015, the claimant requested benefits for the weeks ending May 9, 2015 through July 4, 2015.
14. Payment was held for the weeks ending May 9, 2015 through July 4, 2015 pending an issue resolution.
15. On July 15, 2015, the claimant started and submitted a request for benefits for the week ending July 11, 2015.
16. On July 16, 2015, the claimant was issued a benefit of \$474 for the week ending July 11, 2015 by paper check.
17. On July 17, 2015, issue 0016 5829 53-01, Reporting Requirements — Late Certification, was adjudicated and the result was that the claimant was eligible.
18. On July 18, 2015, a benefit of \$4,266 was processed for the weeks ending May 9, 2015 through July 4, 2015, via direct deposit.
19. On August 2, 2015, the present claim changed to inactive status due to a break in signing.
20. On August 19, 2015, the claimant requested an earlier effective date for her reopened claim.
21. On August 19, 2015, [the] DUA mailed the claimant a Predate Request Questionnaire.
22. On August 19, 2015, the present claim changed to active status.
23. On August 19, 2015, the present claim was reopened effective August 16, 2015, following a break in signing.
24. On September 6, 2015, the present claim changed from active to inactive due to a break in signing.
25. On September 11, 2015, the claimant requested an earlier effective date for her reopened claim.
26. On September 11, 2015, [the] DUA mailed the claimant a Predate Request Questionnaire.

27. On September 11, 2015, the present claim was reopened effective September 6, 2015.
28. On September 22, 2015, the claimant requested an earlier effective date for her reopened claim.
29. On September 22, 2015, a Predate Request Questionnaire from the claimant was received by [the] DUA.
30. On September 26, 2015, the claimant started and submitted a request for benefits for the weeks ending September 12, 2015, and September 19, 2015.
31. On September 27, 2015, DUA made a payment of \$950 to the claimant for the weeks ending September 12, 2015 and September 19, 2015, via paper check.
32. The claimant reopened her claim on October 18, 2015.
33. The claimant reopened her claim on November 29, 2015.
34. On December 18, 2015, the claimant made a request for back payment of her benefits. An issue was created on that day to determine if the claimant was eligible to receive these back payments. On January 25, 2016, this issue was assigned to an adjuster. An error was made resulting in a wrong determination being issued to the wrong claimant. This error was found and corrected. The issue returned to the pending file.
35. On December 22, 2015, a fact-finding questionnaire was sent to the claimant with a due date of January 5, 2016. It was not received back by [the] DUA.
36. On February 1, 2016, the issue was assigned to a different adjuster.
37. On February 2, 2016, the adjuster left a message for the claimant at the phone number on file for her, advising her to call 617-626-6800, no later than close of business February 4, 2016 to provide information regarding her late certifications. No response to the message was received.
38. On February 10, 2016, a Notice of Disqualification was issued to the claimant, with Issue Identification Number 0017 5641 05-01, stating that the claimant was disqualified from receiving benefits for the period of July 12, 2015, through September 5, 2015, because she failed without good cause to claim benefits in a timely manner. The notice indicated that the claimant did not respond to a request for information regarding her late certification.
39. The claimant, for an unknown reason, received the determination on three different occasions. She mailed back the appeal request within 10 days of the mailing date, but, for an unknown reason, [the] DUA did not receive it.

40. On March 17, 2016, the claimant went to the Quincy Career Center and was told that there was no record of her appeal by mail. She was directed to file her appeal electronically.
41. On March 17, 2016, the claimant filed an online appeal. On March 18, 2016, the appeal was dismissed, as it was late.
42. On July 26, 2016, a decision was issued finding the claimant's appeal was late without good cause. She appealed this determination and had a hearing on July 5, 2016.
43. On July 26, 2016, [the] DUA issued a decision that there was justification to find the appeal timely and that she was entitled to a hearing on the merits of the case.
44. The claimant has requested documentation from the Quincy Career Center to show the dates she was physically present at the Center as evidence that she did request benefits in a timely manner for the weeks in question. She was told that this documentation could not be provided.

Credibility Findings

The claimant's testimony that, for each of the weeks in question, she either requested benefits by the Telecert system or by going online at the Quincy Career Center in a timely manner but was unable to do so because of issues with the UI Online system was not found to be credible. The UI Online system logs a note each time a claimant starts a request for benefits and another when and if they submit [a] request. The only such notes in the system are those described in earlier facts. The claimant also testified that she would call in on Wednesdays and not reach a representative. This indicates that she was calling to deal with an issue on her claim, rather than to request benefits through the Telecert line. The Telecert line can be called on any day of the week between 6 a.m. and 10 p.m. It is an automated system. It is unusual for a claimant to have an issue getting through on this line. If a claimant has an issue that needs to be addressed, such as providing information as to why there was a break in signing, they must call in on a specific day that relates to the last number of the social security number. There are often very long wait times for this telephone line. Claimants are also sometimes disconnected or given a message to call back at another time. Therefore, the fact that the claimant always called in on Wednesdays, had difficulty getting through, and then continued to call each day after that in an attempt to get through to someone to help her, is an indication that she was calling to resolve a problem with her claim rather than to actually request benefits for a specific week. If the claimant failed to request benefits for 2 weeks or more, she would need to speak to someone at [the] DUA to request that the weeks be made requestable again and to provide information as to why the late request should be allowed. The record indicates that the claimant believed that she needed to speak to a DUA representative to request benefits for the weeks in question rather than

to address the issues around her failure to request the weeks in a timely manner. She did not understand why the system would not let her request benefits and assumed it was a problem with the system, and that she had to speak to someone to get the problem with the system fixed, rather than to resolve a problem with her claim that made [the] weeks unrequestable.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence.

Since the claimant is seeking a late certification for benefits, we analyze her eligibility under G.L. c. 151A, § 25(a), which provides, in relevant part, as follows:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for—(a) Any week in which he fails without good cause to comply with the registration and filing requirements of the commissioner.

After remand, the review examiner did not find credible the claimant's assertion that she timely claimed benefits during each of the weeks ending July 18, 2015, through September 5, 2015. The review examiner partly based that determination on the fact that the UI Online system shows no record of attempts by the claimant to timely claim benefits during those weeks. Since we find the review examiner's credibility assessment reasonable in relation to the evidence in the record, we will not disturb it on appeal, as explained more fully below. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996).

The consolidated findings show that, prior to the time period at issue here, the claimant had a history of failing to claim benefits during some weeks, but she also successfully requested benefits during other weeks. Given the claimant's prior experience, we can reasonably assume that she knew what to look for when determining whether her request for benefits went through or not. In light of this, we cannot entertain the claimant's suggestion that she timely attempted to request benefits during each of the weeks and issue, and she was somehow misled by the system into believing that her benefit requests had gone through each time, when they in fact had not. Since the claimant did not attempt to claim her benefits during the weeks ending July 18, 2015, through September 5, 2015, and she has not presented any specific compelling circumstances that prevented her from doing so, she has not established good cause for her failure to meet the requirements of G.L. c. 151A, § 25(a).

The review examiner's decision is affirmed. The claimant is denied benefits for the weeks ending July 18, 2015, through September 5, 2015.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 27, 2017



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT
COURT OR TO THE BOSTON MUNICIPAL COURT
(See Section 42, Chapter 151A, General Laws Enclosed)**

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

SVL/rh