

Where agency office had no one to help her and told claimant to return another day for assistance filing appeal, claimant was not directly discouraged by DUA, pursuant to 430 CMR 4.14.

**Board of Review
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Issue ID: 0018 9982 16

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by JoAnn Gangi, a review examiner of the Department of Unemployment Assistance (DUA), concluding that the claimant did not have good cause for requesting a hearing late on a determination sent to her on May 28, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On May 28, 2016, the DUA sent the claimant a Notice of Disqualification, which indicated that she was not eligible, beginning July 5, 2015, for a dependency allowance for one child. The claimant appealed that determination on June 9, 2016. The DUA then sent the claimant another Notice of Disqualification, informing her that she did not have good cause for failing to appeal the May 28, 2016, determination within ten days after the DUA sent the notice. The claimant appealed and attended the hearing. In a decision rendered on January 12, 2017, the review examiner affirmed the agency determination, concluding that the claimant did not have good cause for failing to timely request a hearing, pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14. Thus, she was not entitled to a hearing on the May 28, 2016 determination. The Board accepts the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's ultimate decision dismissing the claimant's appeal is based on substantial evidence and is free from any error of law affecting substantive rights.

In so concluding, we adopt the review examiner's findings of fact, except as follows. The review examiner found in Findings of Fact ## 8 and 9 that the claimant first contacted the DUA on June 5, 2016, (a Sunday) to discuss resolving the May 28, 2016, notice. However, the claimant testified that she went to the agency on a Monday, and her prior submissions to the

DUA are consistent with that testimony. *See* Exhibit # 7, p. 3. Therefore, the June 5 date is not supported by substantial and credible evidence in the record. That date should be June 6, 2016.

We also note that, in Finding of Fact # 10, the review examiner found that the claimant appealed the May 28, 2016, notice on June 9, 2016, which was “sixteen days after the Notice of Disqualification was mailed to her.” She notes this again in Part III of the decision. However, a review of the calendar indicates that June 9, 2016, is only twelve days after May 28, 2016. The appeal was still not timely; however, the calculation done by the review examiner was incorrect.

Lastly, the review examiner did not cite to 430 CMR 4.14 in her legal conclusions. That regulation states that “good cause” is found when “a party establishes . . . that circumstances beyond his or her control prevented the filing of a request for a hearing within the prescribed ten day filing period.” The regulation lists various possible circumstances which could be good cause. Two are potentially applicable. 430 CMR 4.14(1) states that good cause is shown if there was “[a] delay by the United States Postal Service in delivering the Commissioner’s determination.” The claimant testified that she received the determination late. However, the evidence did not show this. She testified that she received the determination on a Friday. The appeal of the initial determination was filed on June 9, 2016. The only Friday after May 28, 2016 was June 3, 2016. June 3 was within the ten-day appeal window. When she received the determination on June 3, the claimant still had, at most, five days to appeal it (June 3 through June 7).¹ Thus, it does not appear that any delay prevented the claimant from filing her appeal timely.

430 CMR 4.14(9) also provides that good cause is shown if “[a] Division employee directly discourages a party from timely requesting a hearing and such discouragement results in a party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing.” Here, the claimant did go to an agency office on June 6, 2016 (within the appeal window). She was turned away, however, after being told that no one could help her that day. Although the claimant could have received further information on June 6 about her claim and possibly received the advice to file an appeal on that day, the fact remains that she was not “directly discourage[d]” on June 6 from filing an appeal. She was told to return on another day to receive assistance. The claimant still could have filed an appeal on June 6 or June 7. Nothing prevented her from doing so.

¹ The claimant could have acted on June 3, the day she received the notice. At the least, she still had four days to take some action to appeal the notice (June 4 through June 7).

Therefore, the review examiner's decision is affirmed, as the claimant has not shown that she had good cause for failing to timely file her request for a hearing on May 28, 2016, determination. The appeal of the May 28, 2016, determination is dismissed.

BOSTON, MASSACHUSETTS
DATE OF DECISION – March 3, 2017



Judith M. Neumann, Esq.
Member



Charlene A. Stawicki, Esq.
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

**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)**

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.

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

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.

SF/rh