

**The claimant did not establish justification for filing a late appeal 204 days after the Notice of Disqualification was issued.**

**Board of Review  
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**Issue ID: 0019 7301 05**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The claimant appeals a decision by Heidi Saraiva, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On August 9, 2016, the DUA issued the claimant a Notice of Disqualification, denying his claim for a dependency allowance for one of his daughters. The claimant appealed the determination to the DUA hearings department after the 10-day appeal period set forth in G.L. c. 151A, §39(b). In a determination issued on March 16, 2017, the DUA denied the claimant's request for a hearing on the August 9, 2016, Notice of Disqualification on the grounds that the request was late. The claimant appealed the March 16, 2017, determination. Following a hearing on May 1, 2017, as to whether the claimant's first request for a hearing was late, the review examiner affirmed the agency's original determination and denied leave for the late appeal in a decision rendered on May 3, 2017. We accepted the claimant's application for review.

The claimant was denied an opportunity for a hearing on the merits of the disqualification because the claimant did not show that he had justification for his late appeal under G.L. c. 151A, § 39(b), and 430 CMR 4.14–4.15. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner for further testimony and evidence regarding the reason for the claimant's late appeal. The review examiner issued consolidated findings of fact on July 21, 2017. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's conclusion that the claimant lacked justification for his late appeal is supported by substantial evidence and free from error of law.

### **Findings of Fact**

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

1. The claimant filed an initial claim for unemployment benefits effective July 31, 2016. The claimant requested to receive correspondence electronically from the Department of Unemployment Assistance (the DUA).
2. On August 9, 2016, the DUA issued the claimant a Notice of Disqualification, which informed him he was not entitled to a dependency allowance under Section 29(c) of the Law for his daughter, [Daughter A]. The Notice also notified the claimant how to request a hearing on the determination and the deadline date to file such an appeal. The Notice states, "This determination will become final unless: 1.) You request a hearing within ten calendar days after the date of mailing, or 2.) You request a hearing within eleven to thirty calendar days after the date of mailing and it is established that such delay was for good cause. In limited circumstances, you may request a hearing after thirty calendar days."
3. The claimant electronically received the Notice of Disqualification in his UI online account mailbox.
4. At the end of August 2016, the claimant viewed the Notice of Disqualification in his UI online inbox. The claimant did not view it until such date because he hadn't noticed the electronic Notification sent to him.
5. On the date he viewed the Notice of Disqualification, the claimant called the DUA to inquire about the Notice of Disqualification. The representative told the claimant he was sent the Notice of Disqualification on August 9, 2016 and because he didn't respond to the Notice he was not eligible for the dependency allowance.
6. A couple of days after his initial telephone call to the DUA relative to the Notice of Disqualification, the claimant called the DUA again and spoke with a representative. The representative told the claimant to file an appeal. The representative told the claimant his appeal request would be late because it was beyond the 10 day deadline.
7. On September 24, 2016, the claimant printed from his computer an appeal request for the Notice of Disqualification. He mailed it to the DUA from the post office in [City A], RI. The claimant did not retain a copy of his appeal.
8. After the claimant mailed the appeal on September 24, 2016, he received a Notice for a Hearing for a dependency allowance for his youngest daughter which was not [Daughter A].
9. After the hearing, the claimant received a dependency allowance for his youngest daughter.
10. Sometime around the middle of October 2016, the claimant called the DUA and asked a representative the reason he received a dependency allowance for one

his daughter's, but not the other two. The representative instructed the claimant to file a new appeal for his two other daughters.

11. Sometime between October and December 2016, the claimant printed another appeal request for [Daughter A] and mailed it to the DUA. The claimant did not retain a copy of his request for a hearing.
12. The claimant did not receive a response to his request for an appeal from the DUA.
13. Sometime between January and February 2017, the claimant called the DUA and was instructed by a representative to fax his appeal request to a fax machine located at the DUA's [City A] location.
14. Sometime in February 2017, the claimant faxed a request for a hearing to a fax machine at the DUA's [CityA] location.
15. On March 2, 2017, the DUA received a request for a hearing via facsimile dated [March] 1, 2017 on the August 9, 2016 Notice of Disqualification for [Daughter B].
16. On March 13, 2017 at 1:07pm, the DUA uploaded the claimant's request for a hearing on the August 9, 2016 Notice of Disqualification for [Daughter B].
17. On March 16, 2017, the Department of Unemployment Assistance issued the claimant a Notice of Disqualification under Section 39 of the Law on his late request for a hearing.
18. On March 18, 2017 at 1:07 p.m., the claimant electronically filed a request for hearing on the Notice of Disqualification dated March 16, 2017.

### 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 ultimate 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. As discussed more fully below, the claimant has failed to establish good cause to consider his request for hearing timely under the applicable Law.

The claimant's late appeal request is governed by G.L. c. 151A, § 39(b), which provides, in pertinent part, as follows:

Any interested party notified of a determination may request a hearing within ten days after delivery in hand by the commissioner's authorized representative, or mailing of said notice, unless it is determined . . . that the party had good cause for

failing to request a hearing within such time. In no event shall good cause be considered if the party fails to request a hearing within thirty days after such delivery or mailing of said notice.

The pertinent Regulation, 430 CMR 4.15, provides that the 30-day limitation shall not apply where the party establishes that:

- (1) A Division employee directly discouraged the party from timely requesting a hearing and such discouragement results in the party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing;
- (2) The Commissioner's determination is received by the party beyond the 30 day extended filing period and the party promptly files a request for hearing;
- (3) The Commissioner's determination is not received and the party promptly files a request for a hearing after he or she knows that a determination was issued.
- (4) An employer threatened, intimidated or harassed the party or a witness for the party, which resulted in the party's failure to file for a timely hearing.

The consolidated findings of fact establish that after applying for a dependency allowance for his three young children, the claimant received a Notice of Disqualification on August 9, 2016, stating that his request for a dependency allowance for one of his children was denied. The claimant did not view the Notice of Disqualification (Notice) until the end of August when he first became aware of it in his UI Online inbox. The Notice advised the claimant how to request a hearing on the determination and when and how to file an appeal. The claimant then contacted the DUA and was advised by a DUA representative to file a late appeal. The review examiner found that the claimant mailed an appeal request to the DUA on September 24, 2016, and mailed another appeal request to the DUA between October and December 2016. The review examiner further found that the claimant did not retain a copy of either request. However, the Agency's records indicate the claimant's first and only appeal received by the DUA regarding the August 9, 2016, Notice of Disqualification, was dated March 1, 2017. It was sent by facsimile to the DUA, and received on March 2, 2017; 204 days after the claimant received the Notice of Disqualification.

The review examiner accepted as credible the claimant's testimony that he mailed an appeal request to the DUA on September 24, 2016. Following the mailbox rule, this appeal was filed 45 days after the mailing of the Notice of Disqualification. The first question we must consider, therefore, is whether the 30-day "good cause" limitation set forth in G.L. c. 151A, §39(b), is applicable in this matter. As previously noted, 430 CMR 4.15 provides that this limitation will be waived under certain circumstances as cited above. On the record before us, none of the circumstances as set forth in 430 CMR 4.14 apply in the claimant's case. The claimant did not fail to timely file his appeal because of any act or omission on the part of either the DUA or an employer. Rather, the claimant's failure to timely file his appeal arose from his own delay in accessing and viewing the Notice of Disqualification that was sent to his UI Online Inbox until the end of August, 2016. Thus, the claimant is subject to the "good cause" limitations contained in G.L. c.151A, §39(b). We do not believe that the claimant's own failure to timely access and view his UI Online Inbox constitutes "good cause" for his late appeal.<sup>1</sup>

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<sup>1</sup> We note the foregoing analysis would also apply if we concluded that the claimant's first and only appeal of the dependency allowance disqualification at issue was dated March 1, 2017.

We, therefore, conclude as a matter of law that, pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.13(4), there is no justification to consider the claimant's request for a hearing timely. The review examiner's decision is affirmed.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 31, 2017**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Judith M. Neumann, 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](http://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.

SPE/rh