

Where the claimant was not given written information about filing an unemployment claim by his most recent employer, he is automatically entitled to have his re-opened claim pre-dated to his first week of total unemployment, pursuant to G.L. c. 151A, § 62A(g), without any further need to show good cause.

**Board of Review
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Issue ID: 0019 9348 56

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

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

The claimant filed a claim for unemployment benefits with the DUA effective November 8, 2015. After returning to work, the claimant was again separated from employment on August 19, 2016. On October 5, 2016, the claimant re-opened his existing unemployment claim, effective October 2, 2016. The claimant later requested that his re-opened claim be pre-dated to August 21, 2016. This request was denied in a determination issued by the DUA on October 25, 2016. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied the pre-date request in a decision rendered on January 6, 2017.

The pre-date was denied after the review examiner determined that the claimant did not have good cause for failing to re-open his claim earlier and, thus, he was not eligible to have an earlier effective date of his re-opened claim, under G.L. c. 151A, §§ 23(b), 24(c), and 430 CMR 4.01(3) and 4.01(4). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the claimant's application for review and remanded the case for additional evidence regarding whether the claimant was given written information by his employer about filing a claim for benefits. The claimant participated in the remand hearing via telephone. Thereafter, the review examiner issued her consolidated findings of fact. 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 is not entitled to a pre-date on his re-opened claim is supported by substantial and credible evidence and is free from error of law, where the claimant's most recent employer failed to provide him with written information about how and where to file a claim for unemployment benefits after he separated from employment.

Findings of Fact

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

1. The claimant had an existing unemployment claim with an effective date of 11/08/2015 and a benefit year end of 11/05/2016.
2. During his benefit year, the claimant obtained new employment with employer A.
3. The claimant separated from employer A on 08/19/2016 when he was laid off.
4. Employer A was the claimant's most recent employer.
5. Around the time of this separation, employer A did not provide the claimant with written information about unemployment benefits.
6. The claimant has no experience reopening unemployment claims. Other than "as soon as possible," the claimant was unaware of any time limits for reopening his unemployment claim.
7. On 10/05/2016, the claimant reopened his unemployment claim himself using the UI Online system. The claimant's reopened claim was effective 10/02/2016.
8. The claimant did not reopen his claim for unemployment benefits sooner because he hoped he would become reemployed quickly, was seeking new employment, wanted to avoid using unemployment benefits, and was unaware of a specific deadline by which to reopen a claim.
9. The claimant is requesting his unemployment claim be reopened effective the week beginning 08/21/2016.
10. On 10/25/2016, the Department of Unemployment Assistance (DUA) issued a Notice of Disqualification disqualifying the claimant from receipt of benefits for any week prior to 10/05/2016 because his reason for not contacting the DUA earlier did not constitute good cause.

Ruling of the Board

In accordance with our statutory obligation, we review the review examiner's decision to determine: (1) whether the consolidated findings of fact are supported by substantial and credible evidence; and (2) whether the original conclusion that the claimant is not entitled to benefits 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. However, as discussed more fully below, since the employer did not comply with the requirements of G.L. c. 151A, § 62A(g), we reject the review examiner's conclusion that the claimant is not entitled to a pre-date.

The review examiner's original decision only addressed whether the claimant had "good cause" for his failure to re-open his claim earlier, pursuant to 430 CMR 4.01(4). Also relevant is G.L. c. 151A, § 62A(g), which provides in pertinent part as follows:

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 . . . instructions on how to file a claim for unemployment compensation 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.

The claimant became separated from his most recent employer on August 19, 2016, but did not re-open his existing unemployment claim until October 5, 2016. After remand, the review examiner also found that the claimant was given no written information by the employer about filing for unemployment benefits, as mandated by G.L. c. 151A, § 62A(g). In light of these facts, and the applicable law, we conclude that the claimant is automatically entitled to have his re-opened claim pre-dated. Where the employer failed to provide the claimant with information on how to file for unemployment benefits, there is no additional need under this section of law to show any form of good cause for not filing the claim earlier. This is because the statute uses mandatory language ("[the] waiting period . . . for an employee who did not receive the information required . . . shall be the Sunday of the initial week such employee would have been eligible . . ."). The fact that the claimant already knew the procedures for filing a claim for benefits is not a consideration listed in the above-cited statute.

We, therefore, conclude as a matter of law that, in light of G.L. c. 151A, § 62A(g), the claimant is automatically entitled to have his re-opened claim be effective earlier without a showing of good cause.

The review examiner's decision is reversed. The claimant is entitled to a pre-date on his re-opened unemployment claim, effective August 21, 2016.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 28, 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

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.

JRK/rh