

The employer does not lose party status under G.L. c. 151A, § 38(b), because it timely responded to the DUA's request for information when it submitted a document with its response by the deadline. However, the employer will not be relieved of charges on account of any payment of benefits on the claim at issue, because under G.L. c. 151A, § 38A, its response was inadequate.

**Board of Review
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Issue ID: 0020 6593 63

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by D. Lusakhpuryan, a review examiner of the Department of Unemployment Assistance (DUA), denying the employer party status because it did not return the initial fact-finding questionnaire to the agency. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits on December 13, 2016. The agency sent the employer a questionnaire to complete regarding the claimant's separation from employment. The deadline to respond to the questionnaire was January 3, 2017. The employer did not return a completed questionnaire to the agency, and instead submitted a document with its response to the questionnaire on December 30, 2016. Subsequently, on January 6, 2017, the agency determined that the employer's response to the questionnaire was not timely and/or adequate. The employer appealed, and its agent attended the hearing. In a decision rendered on February 25, 2017, the review examiner affirmed the agency determination, concluding that the employer did not respond to the agency's request for information, as required by G.L. c. 151A, § 38(b), and as a result, the employer was no longer a party to further proceedings. The review examiner did not address the adequacy issue in her decision. We accepted the employer's application for review.

The issue on appeal is whether the review examiner's conclusion that, pursuant to G.L. c. 151A, § 38(b), the employer lost party status because it did not return the questionnaire issued by the agency is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked for the employer from December 15, 2015 until December 2, 2016. The claimant is no longer a worker of the employer's establishment. The employer's position is the claimant quit his job.

2. The employer retains an agent to respond to unemployment insurance information on behalf of the employer.
3. The agent receives correspondences from the Department electronically.
4. On December 13, 2016, the claimant filed for unemployment insurance benefits.
5. The 1st agent and the 2nd agent both work for the agent's establishment.
6. The Department electronically mailed the employer's agent a Lack of Work Notification questionnaire. The due date for the employer's agent to return the Lack of Work Notification to the Department was December 27, 2016.
7. The 1st agent returned the Lack of Work Notification questionnaire to the Department prior to the deadline date on December 19, 2016 (Exhibit 3). On the Lack of Work Notification questionnaire, the 1st agent selected 'quit' for the separation reason regarding the claimant (Exhibit 3A).
8. On December 21, 2016, the Department electronically mailed the employer's agent an initial questionnaire titled Quit-Other (Exhibit 3). The due date for the employer's agent to return the initial questionnaire, titled Quit-Other, was January 3, 2017 (Exhibit 3). The employer's agent electronically received the questionnaire.
9. The employer's agent still has not returned the initial questionnaire, titled Quit-Other, to the Department.
10. The employer's 2nd agent was responsible for returning the initial questionnaire, titled Quit- Other, to the Department. The 2nd agent was not able to return the initial questionnaire to the Department as the 2nd agent was locked out of her UI Online access as she only helps [t]he employer's agent out occasionally.
11. The employer's agent provided the 2nd agent with [a] spreadsheet listing the questionnaire was due on January 3, 2017.
12. On December 30, 2016, the 2nd agent faxed the Department a document listing the following information: "Last Day Worked: 12/2/2016 Termination Date 12/9/2061 Reason: Voluntary Quit-Abandoned the job (Exhibit 8)." On the document the following information was also listed: account, employer name, Quit-Employer Questionnaire, social security number, last name of claimant, first name of claimant, date created, and due date (Exhibit 8 Page 8).
13. On January 6, 2017, the Department mailed the employer a Notice of Disqualification under Section 38A of the Law (Exhibit 5). On the Notice of Disqualification, the Department wrote: "Inasmuch as the information you

provided was not considered adequate and/or timely you will not be considered a party to further proceedings relating to the allowance of the claim and/or relief of charges (Exhibit 5).”

Ruling of the Board

In accordance with our statutory obligation, we review the examiner’s decision to determine: (1) whether the findings of fact are supported by substantial and credible evidence; and (2) whether the original conclusion that the employer lost party status because it did not return the fact-finding questionnaire is free from error of law. Upon such review and as discussed more fully below, the Board adopts the review examiner’s findings of fact. In adopting these findings, we deem them to be supported by substantial and credible evidence. However, we conclude, contrary to the review examiner, that the employer does not lose party status.

G.L. c. 151A, § 38(b) provides, in relevant part, as follows:

Notice of a claim so filed shall be given promptly by the commissioner or his authorized representative to the most recent employing unit of the claimant and to such other employing units as the commissioner may prescribe. If such employing unit has reason to believe that there has been misrepresentation or has other reasons which might affect the allowance of said claim, or has been requested by the commissioner to furnish any other pertinent information relating to said claim, it or he shall return the said notice to the indicated employment office with the reasons or information stated thereon within eight days after receipt, but in no case more than ten days after mailing of said notice Failure without good cause to return said notice and information within the time provided in this section or prescribed by the commissioner shall bar the employing unit from being a party to further proceedings relating to the allowance of the claim

Also relevant in this appeal is G.L. c. 151A, § 38A, which provides as follows:

(a) If the director, or the director's authorized representative, determines, after providing written or electronic notice to the employer, that a payment of benefits was made because the employing unit, or an agent of the employing unit, was at fault for failing to respond timely or adequately to any request of the department for information relating to the claim for benefits, then: **(i) the employing unit, except for employing units making payments into the Unemployment Compensation Fund under section 14A, shall not be relieved of charges on account of any such payment of benefits;** and (ii) if the employing unit makes payments into the Fund under section 14A, it shall not be relieved from reimbursing the fund on account of any such payment of benefits. For purposes of this subsection, a response shall be considered inadequate if it fails to provide sufficient facts to enable the department to make the proper determination regarding a claim for benefits. A response shall not be considered inadequate if the department fails to ask for all necessary information, except in any case where there has been a failure to respond. (Emphasis supplied.)

G.L. c. 151A, § 38(b), provides that a failure by the employer to timely respond to a request for information by the agency can result in loss of party status. Here, the review examiner found that the employer did not return to the DUA the initial questionnaire issued by the agency on December 21, 2016. She further concluded that the employer's failure to submit a completed questionnaire amounted to a failure to respond to the agency's request for information, and, therefore, that the employer lost party status. We disagree with this conclusion, because it essentially puts form over substance and is inequitable to the employer.

While it is true that the employer did not fill out the fact-finding questionnaire and return it to the DUA, it did submit a document responding to the questionnaire on December 30, 2016, which is well before the January 3, 2017, deadline. In our view, what matters under G.L. c. 151A, § 38(b), is that an employer responds to the DUA's request for information by the set deadline, and not the form in which that response is given. Here, the employer timely responded to the agency's request for information, albeit it did not utilize the agency's form, and, therefore, the employer will not lose party status.

Also at issue in this case is G.L. c. 151A, § 38A, which deals with whether an employer's response to the fact-finding questionnaire is adequate, thereby providing sufficient information to enable the agency to make a proper determination regarding a claim for benefits. The review examiner did not analyze this issue in her decision, presumably because she considered it moot, given that the employer did not return the completed questionnaire to the DUA. Since we have concluded that the employer did respond to the DUA's request for information in a timely manner, we will move on to determine whether or not the response was adequate, as meant under the statute.

In the document submitted on December 30th, with respect to the reasons for the claimant's separation, the employer stated only that the claimant voluntarily quit and abandoned his job. Since this response did not provide any detailed substantive information regarding the circumstances surrounding the claimant's separation from employment, we conclude that the employer's response to the fact-finding questionnaire was not adequate. Consequently, as provided in G.L. c. 151A, § 38A, the employer shall not be relieved of charges on account of any payment of benefits on the claim at issue.

We reverse the review examiner's decision to deny the employer party status, as it responded to the DUA's request for information in a timely manner, as meant under G.L. c. 151A, § 38(b). However, we conclude that the employer's response was not adequate, and, therefore, the employer shall not be relieved of charges on account of any payment of benefits on the claim at issue.

BOSTON, MASSACHUSETTS
DATE OF DECISION – June 27, 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.

SVL/rh