

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 claim predated 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: 0021 1788 30

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by D. Lusakhpuryan, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant's request that his unemployment claim be predated. 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 January 29, 2017. The claimant later requested that his claim be predated to July, 2015. This request was denied in a determination issued by the DUA on April 7, 2017. 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 predate request in a decision rendered on June 27, 2017.

The predate was denied after the review examiner determined that the claimant did not have good cause for failing to file his claim earlier and, thus, was not eligible to have an earlier effective date of his claim under G.L. c. 151A, §§ 23(b) and 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. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's conclusion, that the claimant is not entitled to a predate on his 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 findings of fact and credibility assessments are set forth below in their entirety:

1. The claimant started working for the employer initially on June 22, 1999.
2. The claimant works as an actor for the employer.
3. In July 2015, the claimant was working full-time for the employer.
4. On October 8, 2015, the claimant injured his ankle while working for the employer.
5. The claimant received workers' compensation benefits from October 2015 until about April 2016.
6. The claimant entered into a lump sum settlement with the employer regarding his workers' compensation injury regarding his ankle. The claimant received a gross settlement of \$8,000.
7. The claimant was scheduled to work as an extra for the employer on May 6, 2016 (Exhibit 12). The claimant did not work for the employer on this day. The employer paid the claimant wages for this day even though the claimant did not work on this day (Exhibit 12).
8. The employer discharged the claimant on May 6, 2016.
9. The employer did not provide the claimant with written information on how to file for unemployment insurance benefits.
10. On June 1, 2016, the employer sent the claimant the following letter:

"I am writing regarding your planned SAG extra services scheduled for 5/6/16 on the above referenced film. Production was informed that you still had not arrived 30 minutes after call time on 5/6/16. In addition, production determined following the call time that it had sufficient extras for that day and that your services were not required.

Your union voucher was sent in for processing on or about May 27, 2106 [sic]. Although your services on 5/6/16 were ultimately not required, we have processed your payment for the day as if you actually worked (\$157/8-hour day) and expect to have the check sent to you later this week.

We have complied with SAG-FTRA with respect to your planned services on 5/6/16 and have satisfied all of our obligations to you. As such, we consider this matter closed, but do reserve all of our rights and remedies (Exhibit 12)."

11. The claimant delayed filing for unemployment insurance benefits, as he was looking for work and did not initially know he could file for unemployment insurance benefits.
12. In January 2017, the claimant's friend suggested the claimant file for unemployment insurance benefits. This prompted the claimant to file for unemployment insurance benefits.
13. On January 31, 2017, the claimant filed for unemployment insurance benefits (Exhibit 2). The effective date of the claim is the week beginning January 29, 2017.
14. The claimant is currently monetarily ineligible for unemployment insurance benefits (Exhibit 2).
15. The claimant subsequently requested for the Department to predate his initial claim for unemployment insurance benefits to be effective prior to January 29, 2017.
16. The claimant is requesting for the Department to predate his claim to July 2015, as the claimant believes he will be monetarily eligible for benefits if his claim is predated to July 2015.
17. The claimant was working full-time for the employer in July 2015.
18. On April 7, 2017, the Department issued a Notice of Disqualification denying the claimant's request to have his claim predated under Section 23(b) of the Law (Exhibit 9).

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 claimant is not entitled to a predate 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.

The review examiner's original decision only addressed whether the claimant had "good cause" for his failure to file 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 May 6, 2016, but did not file his existing unemployment claim until January 31, 2017. The review examiner found that, at the time of separation, the employer did not give the claimant any written information 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 claim predated. 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” Here, since the claimant separated from the employer on May 6, 2016, his first possible week of eligibility began on May 8, 2016, and his claim will be predated to that date.¹

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

¹ The claimant is requesting a predate to July, 2015, because he believes beginning his claim at this time will make him monetarily eligible for benefits. While the claimant's request is understandable, we cannot assign a predate to a claim based on what would be most beneficial to the claimant. The predate we are assigning the claimant's claim is the one he is entitled to under applicable law.

The review examiner's decision is reversed. The claimant is entitled to a predate on his unemployment claim, effective May 8, 2016.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 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.

SVL/rh