

**Board of Review
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Issue ID: 0021 2502 87

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), denying the claimant's request to pre-date his claim. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On April 28, 2017, the agency initially determined that the claimant was not entitled to a pre-date on his unemployment claim, which had been determined to be effective March 5, 2017. The claimant appealed and attended the hearing. In a decision rendered on June 14, 2017, the review examiner affirmed the agency's determination, concluding that there was no good cause to allow an earlier effective date of the claim, pursuant to G.L. c. 151A, § 23(b) and 430 CMR 4.01(3). 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 findings of fact are supported by substantial and credible evidence, except for Finding of Fact # 8, in which the review examiner found that "the claimant did not seek medical treatment for his emotional pain" during the period of time he failed to file his unemployment claim. No testimony was taken during the hearing about this specific topic. The review examiner did not ask the claimant if he had seen any medical professional for help with his emotional pain. The record further contains no documentary assertions or statements from the claimant indicating that he did not seek medical treatment.

However, even if the claimant had sought some type of treatment, we would still reach the same conclusion as the review examiner. Although the review examiner found that the claimant was suffering from emotional pain in late January and February, 2017, due to the loss of his job and the death of his wife's cousin, the review examiner also found that the claimant was searching for work, paying bills, and finding ways to support his family. *See* Findings of Fact ## 4 and 9. These findings are supported by the claimant's testimony and by his initial responses to the agency. *See* Exhibit # 1, p. 2. The review examiner concluded, in part, the following:

As he was able to look for work and focus on paying bills and supporting his family after he was laid off, he did not show that [he] would not have been able to sign onto UI Online and file a claim soon after his separation from employment.

Put another way, given what he was doing, the claimant did not carry his burden to show that he was so impaired or incapacitated that he could not file his claim prior to March 8, 2017. Thus, even if he was having emotional issues, and even if he was seeking treatment, the review examiner has already made supported findings that he was searching for work and doing other things which show that he was capable of filing his claim earlier.

We recognize that the DUA has policies in place for determining when a pre-date of a claim may be allowed. One policy states that one “good cause” reason could be that “[t]he claimant could not file because of illness, death in the family, or other compelling personal reasons.” *See* DUA Service Representatives’ Handbook Section 1622(A). Indeed, “[i]n the employment context, ‘good cause’ includes personal reasons; that is, personal reasons that, to a reasonable person, present an acceptable excuse or explanation for the conduct in question.” Khodaverdan v. Department of Employment and Training, 39 Mass App. Ct. 414, 416 (1995) (citation omitted). Here, however, the facts show that the claimant was capable of fulfilling other requirements of the unemployment process (such as searching for work). Although the Board may have weighed the evidence differently, we are not in a position to displace the review examiner’s findings and conclusions, unless they are unsupported or unreasonable. We cannot conclude that the review examiner’s decision was not based on substantial evidence.

The review examiner's decision is affirmed. The effective date of the claimant's claim is March 5, 2017.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 6, 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.

SF/rh