

In light of the mandatory language under G.L. c. 151A, § 62A(g), the claimant was entitled to have his claim pre-dated by a year and a half because he never received written notice from his employer about how to seek unemployment benefits. He does not have to explain why, at the time, he started but did not finish the UI Online application process.

**Board of Review
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Issue ID: 0021 6448 96

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Eric M. P. Walsh, a review examiner of the Department of Unemployment Assistance (DUA), to deny an earlier effective date for a claim for unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from his position with the employer on September 11, 2015. He filed a claim for unemployment benefits with the DUA on April 24, 2017, seeking to pre-date his claim to 2015. His request to pre-date the claim was denied in a determination issued on May 13, 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 request to pre-date the claim in a decision rendered on June 29, 2017. We accepted the claimant's application for review.

An earlier effective date was denied after the review examiner determined that the claimant did not have good cause for failing to file a timely claim for benefits, and, thus, he was not entitled to have his claim pre-dated to 2015 under G.L. c. 151A, §§ 23(b) and 24(c). 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 to obtain further evidence about whether the claimant had been provided with information about applying for benefits, as well as his efforts to file a claim in 2015. Although the employer was invited to participate and produce evidence, only the claimant attended the remand hearing. Thereafter, the review examiner issued his 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 have his claim pre-dated to a September, 2015, effective date is supported by substantial and credible evidence and is free from error of law, where the consolidated findings after remand show that his former employer never provided the requisite written notice under G.L. c. 151A, § 62A(g).

Findings of Fact

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

1. The claimant last worked for the employer on September 11, 2015, after resigning due to an alleged good cause reason.
2. The employer did not provide the claimant with information regarding unemployment benefits around the time of separation.
3. Within two weeks of his separation, the claimant visited the career center in Milford to conduct a work search. During his visit, a staff member informed him of unemployment benefits.
4. On September 30, 2017, at 9:24 p.m., the claimant began the UI Online application process but did not complete it for unknown reasons.
5. The effective date of claim is April 23, 2017.

Credibility Assessment:

The claimant initially testified that he filed in April because after being directly discouraged by a DUA representative within ten days of his separation in September of 2015, he later had a casual conversation with an attorney who informed him that he could have been eligible under the circumstances of his resignation. Now that it came to light that the claimant started his claim on September 30, 2017, but did not complete it for unknown reasons, the claimant's testimony became more inconsistent. The September 30, 2015, event is unreasonable if the claimant was, in fact, directly discouraged by a DUA representative only five or more days prior, and it also calls into question what actually prompted him to file a claim in April of 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 original 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is not entitled to have his claim pre-dated to 2015.

In order to begin the process of obtaining unemployment benefits following a separation from employment, an individual must file a claim. G.L. c. 151A, § 24, provides, in relevant part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall—

(c) Have given notice of his unemployment, registering either in a public employment office or in such other manner, and within such time or times, as the commissioner shall prescribe

Once a claim is filed, the effective date of the claim typically begins on the Sunday before the date of filing. *See* G.L. c. 151A, § 23(b) and (c). The effective date of the claim begins a one-week waiting period before benefits can be paid. *See* G.L. c. 151A, § 23(b).

In order to ensure that workers are informed of the process for seeking unemployment benefits, the Legislature requires that all employers affirmatively notify separating employees of their right to file a claim for unemployment benefits. The notice must be in writing and include specific information. The requirement is set forth under G.L. c. 151A, § 62A, which states, in relevant part, as follows:

(g) *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 the name and mailing address of the employer, the identification number assigned to the employer by said division, instructions on how to file a claim for unemployment compensation, the address and telephone number of the regional office which serves the recipient, and the telephone number of the teleclaim information line. 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. (Emphasis added.)*

We remanded to find out whether the claimant's previous employer had provided him with the written notice about how to file a claim, as mandated under G.L. c. 151A, § 62A(g). Consolidated Finding # 2 provides that it had not. Thus, the claimant is automatically entitled to have the effective date of his claim made retroactive to the Sunday of the initial week that he would have been eligible for unemployment compensation in 2015.

In his original decision, the review examiner concluded that the claimant had failed to establish good cause for not filing a claim shortly after he separated in 2015. This good cause standard derives from a DUA policy to allow a claim effective date to be pre-dated under certain circumstances. *See* DUA Service Representative Handbook, § 1622(A). Among the reasons that constitute good cause are: "[t]he claimant did not receive written information from the employer on applying for benefits; [or] [t]he claimant presents credible information that shows a DUA employee instructed the claimant not to apply earlier" The review examiner's credibility assessment suggests that he still does not credit the claimant's testimony that someone at the DUA Career Center discouraged him from opening a claim in 2015. However, in the present

case, it is not necessary that the review examiner believe him. The fact that the claimant's former employer never provided him with written information about applying for benefits is a separate good cause reason to grant a pre-date under DUA's policy.

Our decision is unaffected by the curious fact that the claimant began the UI Online registration process for opening a claim on September 30, 2015, but did not finish. *See* Consolidated Finding # 4 and Remand Exhibit # 5.¹ The language for granting a pre-date under G.L. c. 151A, § 62A(g), is mandatory. The Legislature placed the burden upon the employer to prove that it provided the required written notice under G.L. c. 151A, § 62A(g). Because the employer in this case has not done so, the claimant is entitled to a pre-date, period. The claimant does not have to explain why he never finished the registration process in 2015.

We, therefore, conclude as a matter of law that, pursuant to G.L. c. 151A, § 62A(g), the claimant is entitled to have the waiting period under G.L. c. 151A, § 23, be the Sunday of the initial week that the claimant would have been eligible for unemployment benefits.

The review examiner's decision is reversed. The claimant is entitled to the effective date on his 2017-01 claim pre-dated to September 13, 2015.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 28, 2017



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

**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

¹ Remand Exhibit # 5 is a UI Online screen printout, which shows that he went so far as to create a password. The claimant testified that he could not remember why he did not complete the filing process, which is understandable after two years. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

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.

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