

0021 7463 25 (Aug. 23, 2017) – After the employer informed DUA that it had fired the claimant, its payroll company stated on a DUA fact-finding questionnaire that the claimant had quit. The latter statement was not only false, but constituted an inadequate response under G.L. c. 151A, § 38A. Incompetence of a third-party administrator’s employee does not constitute good cause under G.L. c. 151A, §§ 38(b) or 38A.

**Board of Review**  
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**Issue ID: 0021 7463 25**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), to deny the employer party status in connection with a claim filed by a former employee following his separation from employment on October 24, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

Upon opening the unemployment claim, the agency sent the employer a Lack of Work Notification questionnaire on October 31, 2016, which the employer returned on November 1, 2016, protesting the claim on the basis that the claimant had been discharged. On March 7, 2017, the DUA sent the employer a discharge questionnaire with a return deadline of March 17, 2017. The employer’s payroll company returned a letter, in lieu of the completed questionnaire, which was returned within the time period, but stating that the claimant had quit his job. As a result of this response, the DUA issued a determination, under G.L. c. 151A, § 38A, providing that the employer would not be considered a party to further proceedings relating to the allowance of the claimant or be relieved of charges. The employer appealed and attended the hearing. In a decision rendered on July 11, 2017, the review examiner affirmed the agency determination to deny the employer standing to dispute the claim, concluding that the employer’s response to the discharge questionnaire was late and inadequate, pursuant to G.L. c. 151A, § 38(b).

### **Ruling of the Board**

After considering the recorded testimony and evidence from the hearing, the review examiner’s decision, and the employer’s appeal, we accept the employer’s application for review. We conclude that the review examiner’s decision to deny party status, pursuant to G.L. c. 151A, § 38(b), is based on substantial evidence and is free from any error of law affecting substantive rights.

Although we do not agree that the employer's response to the discharge questionnaire was untimely simply because the response was in the form of a letter, we agree that the response failed to include "pertinent information relating to said claim," as required under G.L. c. 151A, § 38(b). The fact-finding questionnaire sought information about the circumstances of the claimant's discharge. The letter stated simply that the claimant voluntarily quit. Not only is this false statement not pertinent to the claimant's separation, it also constitutes an inadequate response, within the meaning of G.L. c. 151A, § 38A(a). The review examiner also correctly concluded that the employer did not present good cause for failing to respond adequately or with pertinent information. A third-party administrator employee's incompetence does not constitute good cause, under G.L. c. 151A, § 38(b) or § 38A.

The review examiner's decision is affirmed. The employer is denied party status, pursuant to G.L. c. 151A, § 38(b), and it shall not be relieved of charges on account of the payment of benefits under this claim, pursuant to G.L. c. 151A, § 38A.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 23, 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](http://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.

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