

**Board of Review
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Issue ID: 0021 9945 62

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Rose McDuffy, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant a hearing on the merits of an appeal she filed after the deadline. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On April 14, 2017, the agency determined that the claimant was not entitled to unemployment benefits, pursuant to G.L. c. 151A, §§ 29(a) and 1(r). On April 15, 2017, the agency further determined that the claimant was not entitled to unemployment benefits, pursuant to G.L. c. 151A, § 24(b).

The claimant appealed the disqualification under G.L. c. 151A, § 24(b), and attended a hearing before another DUA review examiner. In a decision rendered on May 25, 2017, that review examiner reversed the agency determination, concluding that the claimant was capable of, available for, and actively seeking employment as of March 21, 2017, and, thus, was entitled to benefits, pursuant to G.L. c. 151A, § 24(b). *See* DUA Issue ID # 0021 4385 33.

After the claimant prevailed at her G.L. c. 151A, § 24(b), hearing, she called the DUA on June 5, 2017, to ask why her unemployment benefits had not yet been disbursed. The claimant was told she had not formally appealed the determination under G.L. c. 151A, §§ 29(a) and 1(r), so she filed an appeal that day. Her appeal under G.L. c. 151A, §§ 29(a) and 1(r), was determined to be not timely filed. Subsequently, the claimant attended the instant hearing regarding the timeliness of her appeal. In a decision rendered on July 27, 2017, the review examiner affirmed the agency determination, concluding the claimant did not have good cause or justification for untimely filing her appeal, pursuant to G.L. c. 15A, § 39(b), and 430 CMR 4.14–4.15. The Board accepted 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, the claimant’s appeal, and information available to the Board regarding the claimant’s claim for unemployment benefits in the agency’s UI Online record-keeping database, we conclude that the claimant timely filed her appeal.

The claimant received two notices of disqualification from the DUA on two successive days, April 14 and 15, 2017. While she only appealed the latter determination on April 17, 2017, the substance of her appeal, as set forth in full below, explicitly addressed both her capability for full-time employment, as well as the nature of her “leave of absence” from her employer:

I am not on a [sic] indefinite leave of absence, I have been terminated from my job. I am capable of working, and I have been seeking employment.

Exhibit # 4, pp. 5–6 (emphasis in original). We note that, as soon as the claimant was told by DUA staff that she was supposed to have appealed both determinations separately, she promptly filed her other appeal with the agency that day. Where the claimant’s initial appeal addressed both issues for which she had been denied benefits, we decline to penalize her here for formally appealing one and not the other. We deem her appeal of the disqualification under G.L. c. 151A, §§ 29(a) and 1(r), to have been timely filed on April 17, 2017.

The review examiner’s decision is reversed. The claimant is entitled to a hearing on the merits in DUA Issue ID # 0021 3016 51.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 21, 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.