

Where the claimant was not given information about filing an unemployment claim by his most recent employer, he is automatically entitled to have his claim pre-dated, pursuant to G.L. c. 151A, § 62A(g).

**Board of Review
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Issue ID: 0022 1570 69

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Rorie Brennan, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant's request that his unemployment claim be pre-dated. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

After separating from his employer, the claimant filed a claim for unemployment benefits with the DUA on June 21, 2017. The claim had an effective date of June 18, 2017. The claimant requested that his claim be pre-dated, but this request was denied in a determination issued by the DUA on July 15, 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 pre-date request in a decision rendered on August 25, 2017.

The pre-date was denied after the review examiner determined that the claimant did not have good cause for failing to file his claim earlier, and, thus, he was not eligible to have an earlier effective date of his claim 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 accept the claimant's application for review. 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 a pre-date 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 stopped working.

Findings of Fact

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

1. On 06/21/17, the claimant filed a claim for unemployment benefits with an effective date of 06/18/17.

2. This is the claimant's first unemployment claim.
3. The claimant worked in a restaurant for approximately two months.
4. The claimant does not recall when he worked for the instant employer.
5. The employer did not provide the claimant with information about his right to apply for unemployment benefits.
6. The claimant waited several months to apply for unemployment benefits because he did not believe he was eligible.
7. After talking with his mother, the claimant learned he might be eligible for unemployment benefits and decided to file a claim.
8. The claimant requested the claim be predated.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, since the employer did not comply with the requirements of G.L. c. 151A, § 62A(g), we reject the review examiner's conclusion that the claimant is not entitled to a pre-date.

G.L. c. 151A, § 62A(g), provides, in pertinent part, as follows:¹

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 review examiner found that the claimant was unsure when he stopped working for his most recent employer, a restaurant. However, the employer informed the agency that he last worked

¹ We recognize that G.L. c. 151A, § 62A(g), was not specifically noticed to the parties as a section of law which was to be considered at the hearing. However, the claimant is the only interested party to this case and application of this statutory provision is to his benefit.

on February 27, 2017. *See* Exhibit #1, p. 2.² Although he stopped working in the late winter, the claimant waited until June of 2017 to file his claim for unemployment benefits. During the hearing, the claimant testified that he was given no written information by the employer about filing for unemployment benefits. He also told this to the DUA, when he was filling out his fact-finding questionnaire. *See* Exhibit # 2, p. 2. Moreover, the employer confirmed that it gave no written information about unemployment insurance to the claimant at the time of his separation. *See* Exhibit # 1, p. 2. Written notice instructing the claimant how to file a claim for benefits is required 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 pre-dated. Where the claimant never received any information from the employer about how to file a new claim, there is no need to also show any form of good cause for not filing the claim earlier. This is because the statute uses mandatory language (“[t]he 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 . . .”). The good cause analysis used by the review examiner was not necessary and is legally erroneous, given the applicability of G.L. c. 151A, § 62A(g).

We, therefore, conclude as a matter of law that the review examiner’s decision to deny the pre-date was based on an error of law, because, under G.L. c. 151A, § 62A(g), since the claimant did not receive information from his most recent employer about how and where to file for unemployment benefits, the claimant is automatically entitled to have his claim be effective earlier without a showing of good cause.

² 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).

The review examiner's decision is reversed. The claimant is entitled to a pre-date on his most recent unemployment claim. The effective date of the claim shall be February 26, 2017, which is the week the claimant separated from his most recent job.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 13, 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