

Claimant was forced to re-open his claim to collect benefits, as he was in and out of unemployment every other week due to the employer's unusual furlough program. Technical barriers designed into the DUA's filing and registration system, that would not be confronted if he were continuously unemployed, constituted good cause to grant a pre-date.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member**

Issue ID: 0022 3860 38

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 unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant was on furlough from his employer during the week ending July 15, 2017. He re-opened a claim for unemployment benefits with the DUA to be paid for that week, which was denied in a determination issued on August 2, 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 benefits during the week ending July 15, 2017, in a decision rendered on September 19, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not establish good cause to have his claim pre-dated, and, thus, he was disqualified under G.L. c. 151A, § 23(b). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's conclusion, that the claimant's circumstances did not establish good cause for a pre-date of his re-opened claim, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. On 05/16/17, the claimant filed a claim for unemployment benefits with an effective date of 05/14/17.

2. For ten weeks after opening his claim for unemployment benefits, the claimant was on a biweekly furlough.
3. For the week 07/09/17 through 07/15/17, the claimant was furloughed and did not work.
4. For the week 07/09/17 through 07/15/17, the claimant forgot to certify his claim for unemployment benefits.
5. On 07/17/17, the claimant contacted the DUA in an attempt to certify his claim for the week beginning 07/09/17.
6. The claimant requested a pre-date on his reopened claim to 07/09/17 so he could request benefits for the week of 07/09/17 through 07/15/17.
7. On 08/02/17, the local office sent the claimant a Notice of Disqualification stating he did not have good cause for failing to re-open his claim earlier under Section 24(c) of the Law.

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. After such review, the Board adopts the review examiner's findings of fact except as follows. In Finding of Fact # 4, the reference that the claimant forgot to certify for the week ending July 15, 2017, is misleading in light of the fact that he did attempt to certify for that week on July 17, 2017. *See* Finding of Fact # 5. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible to have his re-opened claim pre-dated.

In rendering our decision, we consider a number of statutory and regulatory provisions, as well as DUA policy applying those provisions. We start with G.L. c. 151A, § 25(a), which provides, in relevant part, as follows:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for—(a) Any week in which he fails without good cause to comply with the registration and filing requirements of the commissioner. . . .

G.L. c. 151A, § 24 further states:

[An individual, in order to be eligible for benefits under this chapter, shall] . . . (c) Have given notice of his unemployment, by registering either in a public employment office or in such other manner, and within such time or times, as the commissioner shall prescribe, and have given notice of the continuance of his

unemployment and furnished information concerning any remuneration received by him during the period for which he claims benefits, in accordance with the procedures prescribed by the commissioner.

Generally, a claim's effective date begins on the Sunday preceding the date that the individual opens (or re-opens) a claim. G.L. c. 151A, § 23(b). This statutory provision also authorizes the DUA to pre-date a request for benefits, making the claim's effective date (or re-opening effective date) retroactive to a point in time before the week in which the claimant actually completes the steps necessary to meet the agency's registration and filing requirements. *See* G.L. c. 151A, § 23(b); 430 CMR 4.01(3) and (4). The DUA regulations make clear that such a pre-date will only be granted for good cause. 430 CMR 4.01(3) and (4)(b). Although the regulations do not define good cause, the DUA has written guidelines that delineate factors that constitute good cause. *See* DUA Service Representative Handbook (SRH), § 1622 (A).

In the usual case, when an individual is laid off by an employer, the employment relationship is severed. The individual files a claim for benefits and while continuously unemployed, he is permitted up to 21 days to request benefits for any week of unemployment. *See* SRH § 1612(A). Sunday is the first day of the week that individuals can request benefits for the prior week.¹ If the individual goes back to work full-time, the system is designed to stop the payment of benefits. For this reason, the DUA's registration and filing system, whether through Telecert or UI Online, automatically inactivates a claim once a claimant declines benefits, reports full-time work, or reports full-time earnings.

In the present case, the claimant's employment relationship was not severed. He opened a claim on May 16, 2017, and was in and out of unemployment from the same employer every other week. For the week at issue, week ending July 15, 2017, the claimant tried to certify for benefits on the following Monday, July 17, 2017. However, DUA's filing and registration system would not permit him to do so, because he had declined benefits for the prior week, the week ending July 8, 2017. Presumably, he declined benefits because he was not out on furlough. Once he declined benefits, the system automatically inactivated his claim.² On July 17, 2017, when he went to claim benefits for the week ending July 15, 2017, the only way the system would allow him to certify was if he re-opened his claim. When he re-opened the claim on July 17, 2017, the system automatically assigned an effective date of July 16, 2017,³ pursuant to 430 CMR 4.01(4)(b). The only mechanism to obtain an earlier effective date is to request a pre-date.

In short, because of the unusual nature of the claimant's unemployment, he was not granted the same 21-day grace period to certify for a week of benefits afforded to all other individuals who are continuously unemployed. Instead, the DUA's filing and registration system treats his attempt to certify for benefits on July 17, 2017, as a re-opened claim, and the claimant cannot collect benefits for the week ending July 15, 2017, unless he meets one of the DUA's criteria for granting a pre-date.

¹ *See* the DUA's A Guide to Benefits and Employment Services for Claimants, (Rev.d 10-02-17), p. 19, available at <http://www.mass.gov/lwd/docs/dua/p2594-508.pdf>.

² *See* event log entries under this claim for July 9, 2017, which are recorded in UI Online.

³ *See* event log entries under this claim for July 17, 2017, also recorded in UI Online.

Among the reasons listed as good cause for a pre-date are:

- The claimant did not know how to file a claim, took reasonable action under the circumstances to find out how to apply, but did not acquire the knowledge within the first full week of unemployment;
- The claimant attempted to file a claim for benefits by telephone or online, but was unsuccessful due to technical difficulties.

DUA's SRH, § 1622(A).

We believe the claimant's inability to get benefits for the week ending July 15, 2017, is attributable to technical barriers created by DUA's filing and registration system and not because the claimant did anything wrong. Nothing in the record explains what the claimant could have done differently. Had the claimant been continuously unemployed, he would not have had any trouble certifying on the Monday after the week requested. It appears that the DUA's system is simply not designed for an individual who is in and out of full-time employment with the same employer every other week. These circumstances constitute good cause to grant a pre-date.

We, therefore, conclude as a matter of law that the claimant is entitled to have his claim pre-dated for good cause, pursuant to G.L. c. 151A, § 23(b) and 430 CMR 4.01(4)(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending July 15, 2017, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 19, 2018



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

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.

AB/rh