

Because the claimant's former employer failed to provide the claimant with written instructions about how to file for unemployment benefits, she is automatically entitled to have her claim pre-dated. It is irrelevant whether her reasons for not filing earlier constituted good cause.

**Board of Review
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Issue ID: 0022 5533 19

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

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

The claimant separated from her position with her employer on June 30, 2017, and filed a claim for unemployment benefits with the DUA, effective July 30, 2017, which was approved. Subsequently, the claimant requested that the effective date of her claim be pre-dated to July 2, 2017. In a determination issued on October 6, 2017, DUA denied her request for a pre-date. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant,¹ the review examiner affirmed the agency's initial determination and denied the claimant's pre-date request in a decision rendered on November 23, 2017. We accepted the claimant's application for review.

The pre-date was denied after the review examiner determined that the claimant did not have good cause for failing to file her claim earlier and, thus, she was not eligible to have an earlier effective date under G.L. c. 151A, §§ 23(b), 24(c), and 430 CMR 4.01(3). 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 pertaining to the employer's communications about unemployment benefits. 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 original conclusion that the claimant is not entitled to have her claim pre-dated is supported by substantial and credible evidence and is free from error of law, where the claimant's former employer failed to provide her with written information about how to file a claim for unemployment benefits.

Findings of Fact

¹ The claimant's former employer was invited to participate in the hearing as a witness, but did not attend.

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

1. On a claim for benefits filed on 8/2/2017, the claimant requested that her claim be predated to Sunday, 7/2/2017. The request was denied and the effective date of the claim was established as Sunday, 7/30/2017, in accordance with provisions of Section 23(b) of the Law and 430 CMR 4.01.
2. The claimant's last day of physical work was 6/30/2017. The claimant was permanently separated from the employer.
3. At the time of separation, the employer did not provide the claimant with written information about unemployment benefits.
4. At the time of separation, the employer provided the claimant with a severance payments totaling \$7,176.86 to be paid through the end of July 2017.
5. The claimant signed a release of claims in order to receive the payment.
6. The claimant did not file an unemployment claim immediately because she assumed that she was unable to file since she was receiving severance payments because it was illegal.
7. The claimant did not attempt to contact the DUA to determine if she could file an unemployment claim while receiving severance payments.
8. Nobody from the DUA told the claimant that she was ineligible for unemployment benefits while she was receiving severance pay.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. As written, the statement in Consolidated Finding # 6, "because it was illegal," is unclear. During the hearing, claimant explained that she thought it was illegal to collect unemployment benefits while still getting paid by her employer, referring to her severance payments.² Although Consolidated Finding # 8 states that nobody from "the DUA" told the claimant that she was ineligible for benefits while receiving severance pay, the remanded question asked about her former employer, and the claimant's answer pertained to her former

² While not explicitly incorporated into the review examiner's findings, this testimony is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. 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).

employer. In adopting the remaining findings, we deem 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 ineligible to have her claim pre-dated.

The review examiner's original decision only addressed whether the claimant had "good cause" for her failure to file her claim earlier, pursuant to 430 CMR 4.01(3). Also relevant is G.L. c. 151A, § 62A(g), which provides in pertinent part as follows:

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 claimant's former employer did not provide written information to the claimant with instructions about how to file an unemployment claim. Consolidated Finding # 3. Therefore, the claimant is automatically entitled to have her claim pre-dated to the Sunday of the initial week that she would have been eligible for benefits. Given the mandatory statutory language, it is not necessary for the claimant to demonstrate good cause for not filing earlier pursuant to 430 CMR 4.01(3).

We, therefore, conclude as a matter of law that pursuant to G.L. c. 151A, § 62A(g), the employer's failure to show that it provided the claimant with written information about filing an unemployment claim automatically entitles her to have her claim pre-dated.

The review examiner's decision is reversed. The claimant is entitled to have her unemployment claim pre-dated, with an effective date of July 2, 2017.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 30, 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