

**Board of Review
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Issue ID: 0022 6234 66

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 dismiss the claimant's appeal of a notice of disqualification issued by the DUA on August 16, 2013. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On October 20, 2017, the agency initially determined that the claimant was not entitled to a hearing on the August 16, 2013, notice. The claimant appealed and attended the hearing. In a decision rendered on January 24, 2018, the review examiner affirmed the agency determination, concluding that the claimant had not shown justification pursuant to 430 CMR 4.15 for not timely appealing the August 16, 2013, notice. Therefore, she was not entitled to a hearing. 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, and the claimant's appeal, we conclude that the review examiner's findings of fact are supported by substantial and credible evidence in the record, except for the date of September 13, 2017, noted in Findings of Fact ## 10, 11, and 12. The review examiner obtained this date from Exhibit # 3. However, this date was not the date of the claimant's appeal. In the October 20, 2017, notice dismissing the claimant's appeal, the appeal date is noted as August 9, 2017. In addition, the DUA sent the claimant a questionnaire about this issue, which was dated August 10, 2017. *See* Exhibit #4.¹ Therefore, we replace the "September 13, 2017" date in Findings of Fact ## 10, 11, and 12 with "August 9, 2017."

In so doing, we do not change the ultimate outcome of this decision. The appeal, filed on August 9, 2017, was submitted almost four years after the original notice was issued on August 16, 2013. The review examiner clearly did not find the claimant's testimony to be credible that she earnestly tried to appeal the determination in 2013. When considering an appeal, we will not disturb credibility assessments which are reasonably based on the evidence in the record. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Although the claimant's testimony about what she did in 2013 was not

¹ We have also reviewed the claimant's unemployment claim in the DUA's UI Online computer system and note that the appeal was created in the computer system on August 9, 2017.

disputed, as she was the only witness during the hearing, the review examiner was not compelled or required to believe her testimony. *See McDonald v. Dir. of Division of Employment Security*, 396 Mass. 468, 470 (1986). The review examiner in this case offered a reasonable basis for discrediting the claimant's testimony. Because the claimant has not shown justification for her late appeal pursuant to the provisions of 430 CMR 4.15, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.

The review examiner's decision is affirmed. The claimant is not entitled to a hearing on the August 16, 2013, determination.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 29, 2018



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**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