

**Board of Review
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Issue ID: 0023 1388 86

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by Krista Tibby, a review examiner of the Department of Unemployment Assistance (DUA), to deny the employer party status on an unemployment claim filed by a former employee. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On September 30, 2017, the agency initially determined that the employer would not be considered a party to further proceedings on the claimant's claim, because the information provided to the agency was inadequate and/or late. The employer appealed and attended the hearing. In a decision rendered on November 21, 2017, the review examiner affirmed the agency determination, concluding that the employer's response was inadequate pursuant to G.L. c. 151A, § 38A, and, thus, the employer was not permitted to be a party to the claim. The Board accepts the employer'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 employer's appeal, we conclude that the review examiner's findings of fact are supported by substantial and credible evidence in the record.

The review examiner concluded that the employer's response was inadequate under G.L. c. 151A, § 38A, and, therefore, that the employer would not be considered a party to further proceedings on the claim for benefits. However, G.L. c. 151A, § 38A, does not provide for such penalty. Under G.L. c. 151A, § 38A, the applicable consequence is that the employer cannot be relieved of charges in the event that the claimant is erroneously paid benefits. As the employer failed to provide information regarding the final incident which led to the claimant's separation or documentation as to any rules or policies violated, we conclude that the employer was at fault for such failure, and, therefore, that it cannot be relieved of charges.

We also observe, however, that G.L. c. 151A, § 38(b), was noticed on the Notice of Hearing. This section of law was not specifically addressed in the review examiner's analysis. Under G.L. c. 151A, § 38(b), a failure by the employer to timely respond to a "notice of claim" or to provide any other "pertinent" information requested by the DUA relative to a claim can result in loss of party status. As noted above, in this case, the employer did not provide specific information about the claimant's separation on the DUA's initial substantive questionnaire. During the

hearing, the employer's agent did not offer any specific reason why more information was not submitted to the agency prior to the deadline. The agent simply testified that the employer had sent to the agent one letter, on or about August 31, 2017, but no further documentation. On this evidence, it cannot be concluded that the employer had good cause for failing to provide pertinent information about the claimant's separation. Therefore, under G.L. c. 151A, § 38(b), the employer is not to be considered a party to further proceedings on the claim for benefits.

The review examiner's decision is affirmed. The employer is denied party status, pursuant to G.L. c. 151A, § 38(b), and it shall not be relieved of charges on account of the payment of benefits under this claim, pursuant to G.L. c. 151A, § 38A.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 7, 2017



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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