

The claimant, who filed her hearing request 7 days late, is not entitled to a hearing pursuant to G.L. c. 151A, § 39(b). That she did not read the Notice of Determination entirely and did not realize the need to file a timely appeal is not good cause for a late appeal under the DUA regulations at 430 CMR 4.14.

**Board of Review
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Issue ID: 0024 0449 99

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 a hearing on the merits in connection with a determination to deny benefits, dated November 28, 2017. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant filed an unemployment claim, effective October 15, 2017. On November 28, 2017, the DUA issued a notice determining the claimant to be ineligible for benefits based upon her recent separation from employment. The claimant appealed that determination to the DUA hearings department after the 10-day filing period. On January 9, 2018, the DUA sent the claimant another determination, this time stating that there was no justification to consider the claimant's appeal timely. The claimant sought a hearing on this timeliness determination.¹ Following a hearing on the merits attended by the claimant, the review examiner affirmed, denying the claimant's request to appeal the November 28, 2017 determination. We accepted the claimant's application for review.

The review examiner reached her decision after concluding that the claimant did not have justification for failing to timely appeal the November 28, 2017, determination pursuant to 430 CMR 4.15. 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 for further subsidiary findings from the existing record in order to clarify the appeal dates for each determination and the claimant's reason(s) for filing them late. Thereafter, the review examiner issued her 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 decision, which concluded that the claimant has not provided a reason that constituted good cause for filing a late appeal

¹ As noted in the Consolidated Findings, the request for a hearing on this second determination was filed late as well.

under the DUA regulations at 430 CMR 4.14, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant's mailing address is a post office box at the [Town A], Massachusetts post office.
2. On 11/28/2017, the DUA issued the claimant a Notice of Disqualification under the Issue ID: [00]23 5717 44, under G.L. c 151A, Section 25(e)(1) of the law. The claimant received that notice on 12/7/2017.
3. On 12/15/17, the claimant's appeal on the Notice of Disqualification under Issue ID: [00]23 5174 4[4] under G.L. c 151A, Section 25(e)(1) was received at the DUA. The claimant signed the appeal on 12/7/17. The claimant's appeal was received seven days beyond the ten day time limit. The appeal was late because the claimant did not read the notice entirely and did not realize the need to file a timely appeal.
4. On 1/9/18, a Notice of Disqualification under Issue I.D.: [00]24 0449 99, under Section 39(b) was e-mailed to the claimant and mailed to the claimant's correct mailing address, disqualifying her under the provisions of Section 39(b) of the law. The claimant received the Notice of Disqualification on 1/23/18. The claimant received the Notice of Disqualification on 1/23/18 because she does not go to the post office on a daily basis.
5. On 1/23/18, the claimant submitted an appeal on the Notice of Disqualification Issue I.D.: [00]24 0449 99 that was mailed to her on 1/9/18. The request for hearing was received four days beyond the ten day time limit.
6. The claimant did not receive either disqualification via e-mail.
7. The post office is two miles from the claimant's home. The claimant does not drive and does not have a license. There is public transportation in the claimant's area, but she has no income at this time and could not afford public transportation.
8. The claimant is now checking her mail more frequently.

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. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we also agree with the review examiner's legal conclusion that the claimant did not present good cause for filing a late appeal.

The unemployment statute sets forth a time limit for requesting a hearing. G.L. c. 151A, § 39(b), provides, in pertinent part, as follows:

Any interested party notified of a determination may request a hearing within ten days after delivery in hand by the commissioner's authorized representative, or mailing of said notice, unless it is determined . . . that the party had good cause for failing to request a hearing within such time. In no event shall good cause be considered if the party fails to request a hearing within thirty days after such delivery or mailing of said notice. . . .

In this case, the claimant sought a hearing to appeal the November 28, 2017 disqualifying determination. The appeal deadline was 10 days later, December 8, 2017. Consolidated Finding # 3 states that the claimant's appeal was "received" seven days beyond the 10-day appeal deadline. More precisely, Exhibit # 3 shows that the claimant's hearing request is postmarked December 15, 2017, seven days beyond the 10-day appeal deadline. It would not have been "received" by the DUA until a few days later.² For purposes of our analysis, we consider the postmark date, not the receipt date, to be the filing date. *See Pavian, Inc. v. Hickey*, 452 Mass. 490, 496–497 (2008). In any case, there is no question that this appeal was filed beyond the 10-day appeal period.

Under its regulations at 430 CMR 4.14, the DUA is permitted to extend the 10-day filing deadline under certain circumstances. We remanded, in part, for further findings of fact as to the reason(s) that the claimant did not meet the filing deadline. Consolidated Finding # 7 indicates that the claimant had to make an effort to pick up her mail, because, at the time, the claimant had to walk to the post office, which is a couple of miles away. However, the actual reason that the claimant's appeal was late is stated in Consolidated Finding # 3. She did not read the Notice of Determination entirely and, consequently, she did not realize the need to file a timely appeal. *See* Consolidated Finding # 3. This reason is not among those listed as an example of good cause for filing a late appeal under 430 CMR 4.14. Nor does it fall within the catch-all exception: "Any other circumstances beyond a party's control which prevented the filing of a timely appeal." 430 CMR 4.14 (12). Carefully reading the DUA notice was within the claimant's control.

We, therefore, conclude as a matter of law that the claimant is not entitled to a hearing on the merits of the DUA's November 28, 2017, determination denying benefits, because the claimant's appeal was filed after the statutory filing deadline under G.L. c. 151A, § 39(b).

² *See* Exhibit # 2, the hearing request, which shows a date stamp of December 20.

The review examiner's decision is affirmed. The claimant's appeal of the November 28, 2017, determination is dismissed.

BOSTON, MASSACHUSETTS
DATE OF DECISION – June 28, 2018



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

AB/rh