

The claimant did not have good cause to file a late appeal. Where the evidence showed that she viewed her UI Online inbox multiple times shortly after a determination was issued, she failed to show that circumstances beyond her control prevented her from viewing the notice of disqualification in her UI Online inbox and appealing it prior to the 10-day deadline.

**Board of Review
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Issue ID: 0024 4373 04

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) that the claimant lacked good cause to justify her late request for a hearing pursuant to G.L. c. 151A, § 39(b).

The claimant had filed a claim for unemployment benefits, which was denied in a determination issued by the agency on December 30, 2017. The claimant appealed the determination to the DUA hearings department on January 22, 2018. On February 10, 2018, the DUA denied the claimant's appeal as untimely under G.L. c. 151A, § 39(b). The claimant appealed the timeliness determination to the DUA hearings department, and a hearing was held before a review examiner. In a decision rendered on April 24, 2018, the review examiner affirmed the agency's determination and concluded that the claimant failed to establish good cause for her late appeal. The claimant sought review by the Board, which affirmed the review examiner's decision, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On October 31, 2018, the District Court ordered the Board to obtain further evidence and issue a new decision. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning the claimant's activities in the DUA's UI Online system. The claimant participated in the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not have good cause for filing a late appeal under G.L. c. 151A, § 39(b), is supported by substantial and credible evidence and is free from error of law, where the review examiner found, after remand, that the claimant viewed her UI Online inbox multiple times on January 2, 2018, which was three days after the Notice of Disqualification was sent to her UI Online account.

After reviewing the entire record, including the recorded testimony and evidence from the hearings, the review examiner's original decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we affirm the review examiner's decision.

Findings of Fact

The review examiner's consolidated findings of fact, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant had indicated at the time she filed her claim that she wanted all correspondence to be sent to her electronically.
2. On 12/30/17, a Notice of Disqualification was sent to the claimant's online account.
3. Between 12/30/17 and 1/22/18, the claimant viewed her UI online inbox ten times on 1/2/18. The claimant could not recall why she viewed her inbox ten times on 1/2/18. (Remand Exhibit 8)
4. The claimant never checked her UI Online inbox between 1/2/18 and 1/22/18, because she had not received an email from the agency informing her that she had anything in her inbox.
5. After not receiving benefits, the claimant called the agency to inquire. She was informed that she had been disqualified and that she needed to appeal the Notice of Disqualification that was in her inbox. (Remand Exhibit 9)
6. After speaking to an agency Representative, the claimant opened the Notice on 1/22/18 and appealed it immediately.
7. On 1/22/18, the 22nd day after such determination was issued, the appellant filed an appeal online

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. In adopting these findings, we deem them to be supported by substantial and credible evidence. Relative to the portion of Consolidated Finding # 4 that states the claimant did not check her UI Online inbox between January 2, 2018, and January 22, 2018, we note that Consolidated Finding # 3 states, and Consolidated Finding # 6 implies, that the claimant checked her inbox on both January 2nd and January 22nd. We therefore construe this portion of Consolidated Finding # 4 to mean that the claimant did not look at her UI Online inbox from January 3, 2018, through January 21, 2018.

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. . . .

The DUA regulation found in 430 CMR 4.14 is also relevant and provides, in part, as follows:

The Commissioner may extend the ten day filing period where a party establishes to the satisfaction of the Commissioner or authorized representative that circumstances beyond his or her control prevented the filing of a request for a hearing within the prescribed ten day filing period.

After remand, the review examiner found that the agency sent a Notice of Disqualification to the claimant's online account on December 30, 2017, but the claimant appealed it on January 22, 2018, which was 22 days after the determination was issued and several days after the 10-day deadline to appeal had passed. The claimant argued that she did not appeal the disqualification until January 22nd, because she was not aware of the disqualification until she spoke to a DUA representative on that day. However, the consolidated findings and documentary evidence in the record establish that the claimant viewed her UI Online inbox, which contained the Notice of Disqualification, about a week before the 10-day deadline had passed, which gave her ample time and opportunity to appeal. The claimant stated that she did not recall why she viewed her inbox multiple times on January 2nd, so it is unknown whether she opened the Notice of Disqualification and for some reason failed to act on it, or whether she didn't even open the notice at that time for some unknown reason. As a result of the claimant's failure to recall what happened on January 2nd, she has not established that circumstances beyond her control prevented her from opening the Notice of Disqualification and filing a timely appeal prior to the 10-day deadline.

We, therefore, conclude as a matter of law that the claimant did not have good cause to justify her late request for a hearing under 430 CMR 4.14. Therefore, the claimant has not met the requirements for a hearing under G.L. c. 151A, § 39(b).

The review examiner's decision is affirmed. The claimant is not entitled to a hearing on the merits of the determination dated December 30, 2017.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 17, 2019



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

SVL/rh