

The claimant had good cause for the delay in timely filing his appeal and is entitled to a hearing on the merits under G.L. c. 151A, § 39(b). His dyslexia, a medical circumstance beyond his control, affected his ability to read and to understand the DUA notice.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0025 1912 55

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 unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits effective February 25, 2018. The DUA mailed the claimant a Notice of Disqualification on March 20, 2018. The claimant received the Notice on or about March 27, 2018. The claimant appealed that determination to the DUA on April 15, 2018, the 26th day after the Notice was issued. The DUA denied the claimant's appeal on May 9, 2018. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's initial determination and denied the claimant's appeal as untimely in a decision rendered on June 13, 2018. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the claimant's application for review. Our decision is based upon our review of the entire record.

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, is supported by substantial evidence and free from error of law, where the claimant suffers from a medical condition which causes him to have difficulty reading and understanding documents.

Findings of Fact

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

1. The claimant filed a claim for unemployment benefits effective February 25, 2018.
2. The claimant elected to receive all correspondence from the Department of Unemployment Assistance (DUA) via U.S. mail.

3. The claimant provided the DUA with his correct mailing address.
4. On March 20, 2018, the DUA issued the claimant a Notice of Disqualification (the notice) under section 29(a) & 1(r) of the law. The claimant received the notice on or around March 27, 2018.
5. The claimant had difficulty reading and understand the notice because he suffers from dyslexia.
6. The claimant had a friend explain the notice to him. It is unknown when the notice was first explained to the claimant.
7. Thereafter, the claimant spoke with a DUA representative regarding the issues effecting his claim. It is unknown when the claimant contacted the DUA.
8. After speaking with the DUA representative, the claimant did not file his appeal request because he forgot what he was told reading the process.
9. The claimant attempted to call the DUA and, for an unknown reason, his call was disconnected. It is unknown when the claimant contacted the DUA via telephone.
10. The claimant electronically completed the appeal request on April 15, 2018, the 26th day after the notice was issued.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we do not agree with the review examiner's conclusion that the claimant did not have good cause under the statute for filing a late appeal. Rather, we conclude that the review examiner's findings of fact support the conclusion that the claimant's failure to meet the filing date was related to his medical condition, dyslexia, which interfered with his ability to read and understand, and thus he had good cause for failing to file a timely request for a hearing.

We analyze the claimant's eligibility to file a late appeal under G.L. c. 151A, § 39(b), which 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 . . . (Emphasis added.)

Also relevant in this case is the DUA regulation, 430 CMR 4.14, which provides in relevant 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 . . . Examples of good cause for a failure to file a timely request for a hearing include, but are not limited to, the following: (12) Any . . . circumstances beyond a party's control which prevented the filing of a timely appeal. . . .

The claimant submitted his request for a hearing 26 days after the Notice of Disqualification was mailed by the DUA. G.L. c. 151A, § 39(b), allows for submission of an appeal within 30 days after the Notice was mailed, if the party had good cause. As set forth under 430 CMR 4.14(12), any circumstances beyond a party's control may constitute good cause for failure to file a timely appeal. We must determine whether circumstances beyond the claimant's control existed within the meaning of 430 CMR 4.14(12).

The findings establish that the claimant's failure to meet the filing date for his appeal was related to his medical condition. The claimant has dyslexia which caused him to have difficulty reading and understanding the Notice he received from the DUA. In our view, the claimant's delay in filing his appeal was due to medical circumstances beyond his control, in accordance with the meaning of 430 CMR 4.14(12).

We conclude as a matter of law that the claimant had good cause for his failure to meet the filing deadline. Therefore, the claimant has met the requirements for a hearing under G.L. c. 151A, § 39(b).

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the disqualification dated May 9, 2018.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 30, 2018



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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.

SPE/rh