

**Where the claimant was not given written information about filing an unemployment claim by her most recent employer, she is automatically entitled to have her claim pre-dated, pursuant to G.L. c. 151A, § 62A(g), without any further need to show good cause.**

**Board of Review  
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**Issue ID: 0026 0086 90**

## **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 a pre-date of her unemployment claim. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her position with an employer. She filed a new claim for unemployment benefits with the DUA on June 25, 2018, and the claim was determined to be effective June 24, 2018. The claimant requested a pre-date for the claim, which was denied by the DUA in a determination issued on September 5, 2018. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied the pre-date.

The pre-date was denied after the review examiner determined that the claimant failed to establish good cause for failing to file her claim sooner than June 25, 2018, and, thus, was not eligible for a pre-date, pursuant to G.L. c. 151A, § 24(c). 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 and remanded the matter to the review examiner to make subsidiary findings of fact from the record as to whether the claimant's most recent employer gave her written information about filing a claim for benefits. Thereafter, the review examiner issued his 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 decision to deny the claimant a pre-date of her claim is supported by substantial and credible evidence and is free from error of law, where the claimant's most recent employer did not give her written information about filing a claim following her most recent separation from employment.

### **Findings of Fact**

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

1. On a claim for benefits filed on 6/25/2018, the claimant requested that her claim be predated to Sunday, 6/10/2018. The request was denied and the effective date of the claim was established as Sunday 6/24/2018 in accordance with provisions of Section 23(b) of the Law and 430 CMR 4.01.
2. The claimant's last day of physical work was 6/8/2018. The claimant [was] temporarily laid off from her employer.
3. The claimant has filed an unemployment claim each year since 2010 and was aware that she could file a claim upon separation from employment even though the employer did not provide any written information upon the temporary separation.
4. At the time of her separation, the claimant had an existing unemployment claim which had an effective date of 6/18/2017 through 6/16/2018.
5. The claimant had used the UI Online system in the past to certify for unemployment benefits and was aware that claim information could be processed online.
6. The claimant did not go online and instead attempted to contact the DUA by telephone for a two-week period and was unable to get through until Monday 6/25/2018.
7. Prior to 6/25/2018, the claimant did not go to any career center to seek help with navigation on her unemployment claim.

### 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 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 reject the review examiner's legal conclusion that the claimant is not entitled to a pre-date.

The claimant requested that her new unemployment claim be pre-dated to the period immediately after her most recent lay off. Rather than an effective date of June 24, 2018, the claimant wants an effective date for her claim of June 10, 2018. The DUA's calculation of an effective date of a claim is established by law. Under G.L. c. 151A, § 23, benefits are to be paid to an individual in total or partial unemployment who registers, or files a claim, with the DUA and who serves a one-week waiting period. Specifically, "[w]ith respect to an individual in total unemployment . . . the waiting period shall commence on the Sunday immediately preceding the date of registration." Thus, in this case, where the claimant filed her claim on June 25, 2018, the claim was effective June 24, 2018.

Also relevant to this matter is G.L. c. 151A, § 62A(g), which provides, in pertinent part, as follows:<sup>1</sup>

Each employer shall issue to every separated employee, as soon as practicable, but not to exceed 30 days from the last day said employee performed compensable work, written information furnished or approved by said division which shall contain . . . instructions on how to file a claim for unemployment compensation . . . . Delivery is made when an employer provides such information to an employee in person or by mail to the employee's last known address. The waiting period under section 23 for an employee who did not receive the information required by this paragraph and who failed to file timely for benefits, shall be the Sunday of the initial week such employee would have been eligible to receive unemployment compensation. Each employer shall have the burden of demonstrating compliance with the provisions required herein.

We have held on numerous occasions, in many different circumstances, that the language of this statute is mandatory. If the employer does not comply with the provisions of the statute, a pre-date must be allowed. The statute does not provide any leeway for denying a pre-date in cases where a claimant does not receive the written information but may have filed for benefits before or, for some other reason, knows about filing a claim for unemployment benefits. Our prior holdings come from the statutory language itself, and the DUA has promulgated policies in accord with our interpretation of this section of law. *See* DUA Service Representative Handbook Section 1622(B). Therefore, the review examiner's denial of the pre-date in this case is clearly erroneous under the statute and DUA policy.

Here, the claimant was laid off as of June 8, 2018. The review examiner has found that the claimant did not receive written information about filing a claim for unemployment benefits. Consolidated Finding of Fact # 3. In light of these facts and the applicable law, we conclude that the claimant is automatically entitled to have her claim pre-dated. The fact that the claimant had previously filed unemployment claims is not a consideration listed in the above-cited statute. Again, the good cause analysis used by the review examiner was not necessary.

We make one final observation. The claimant requested a pre-date to June 10, 2018. However, her new claim for unemployment benefits cannot be pre-dated to a period of time which is already within the benefit year of a prior claim. A claim filed in 2017 was determined to have a benefit year end date of June 16, 2018. Consolidated Finding of Fact # 4. At that time, the claimant's prior claim expired, and she was entitled to file a new claim, which would be effective June 17, 2018.<sup>2</sup>

We, therefore, conclude as a matter of law that the review examiner's decision to deny the pre-date was based on an error of law, because, under G.L. c. 151A, § 62A(g), the claimant did not

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<sup>1</sup> We recognize that G.L. c. 151A, § 62A(g), was not specifically noticed to the parties as a section of law which was to be considered at the hearing. However, the claimant is the only interested party to this case and application of this statutory provision is to his benefit and will not leave the claimant aggrieved.

<sup>2</sup> The claimant may contact the agency separately to request benefits for the week of June 10, 2017, which would be the last week of her prior claim. Such a request would not be a pre-date, but a late certification issue.

receive information from his most recent employer about how and where to file for unemployment benefits. The claimant is automatically entitled to have her claim be effective earlier without a showing of good cause.

The review examiner's decision is reversed. The claimant's unemployment claim shall be pre-dated to June 17, 2018.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 27, 2019**



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](http://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/jv