

**Board of Review
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**Paul T. Fitzgerald, Esq.
Chairman
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Member
Michael J. Albano
Member**

Issue ID: 0026 3801 76

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), to award the claimant benefits following his separation from employment on July 13, 2018. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On October 15, 2018, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and only the claimant attended the hearing. In a decision rendered on January 19, 2019, the review examiner reversed the agency determination, concluding that the claimant had not engaged in deliberate misconduct in wilful disregard of the employer's interest and, thus, was not disqualified under G.L. c. 151A, § 25(e)(2). The Board accepted the employer's application for review.

Ruling of the Board

On appeal, the employer, through its agent, asserted that the employer was unable to attend the hearing because neither the employer nor the agent received any notification of the date and time of the hearing. Based upon this representation, which amounts to an asserted denial of the employer's due process rights, the Board inquired into the issue of notice. This inquiry included a review of the correspondence stored in and generated by the DUA UI Online data system. This review established that the employer's hearing notice, including the date and the time of the hearing, was posted in the agent's electronic mailbox on December 31, 2018, for the hearing on January 18, 2018. Therefore, we conclude that the employer was provided notice and an opportunity to be heard.

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 decision is based upon substantial evidence and is free from any error of law affecting substantive rights.

The review examiner's decision is affirmed. The claimant is entitled to benefits for the week beginning July 8, 2018, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 28, 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 DISTRICT 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