

**Claimant's appeal of a notice of disqualification was more than 10 days, but less than 30 days, after issuance of the notice. He did not show good cause for the late appeal, pursuant to 430 CMR 4.14.**

**Board of Review  
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**Issue ID: 0028 0344 02**

## **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 a Notice of Disqualification issued by the DUA on October 8, 2018. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant filed a claim for unemployment benefits with the DUA, and his claim was determined to be effective August 12, 2018. The DUA issued him two notices of disqualification, on October 8, 2018,<sup>1</sup> and December 12, 2018.<sup>2</sup> He did not submit timely appeals in response to either notice. However, a hearing was scheduled to address the reasons for his late appeals. Following the hearing attended by the claimant, the review examiner affirmed the agency's initial determination to deny the claimant a hearing on the merits of the October 8, 2018 notice of disqualification.

A hearing on the merits was denied after the review examiner determined that the claimant did not have justification for either late appeal and, thus, was not entitled to the hearing pursuant to G.L. c. 151A, § 39(b) and 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 accept 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 is not entitled to hearing on the merits of his disqualification, is supported by substantial and credible evidence and is free from error of law.

### **Findings of Fact**

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

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<sup>1</sup> The October 8, 2018, notice related to the claimant's failure to complete all components of the RESEA program.

<sup>2</sup> The December 12, 2018, notice related to a finding that the claimant did not timely appeal the October 8, 2018, notice.

1. The effective date of the claim is 8/12/18.
2. When the claimant filed his claim for unemployment insurance benefits, he elected to receive his correspondence electronically via the UI Online system. He elected to receive his correspondence in English. The claimant did not change these preferences prior to 10/08/18.
3. The DUA created a disqualification notice for Issue Identification Number 0027 3210 13-01. This disqualification notice is dated 10/08/18.
4. The disqualification notice for Issue Identification Number 0027 3210 13-01 indicates that the claimant could appeal it. The disqualification notice reads, "This determination will become final unless: 1.) You request a hearing within ten calendar days after the date of mailing."
5. The DUA transmitted the disqualification notice for Issue Identification Number 0027 3210 13-01 to the claimant's UI Online inbox on 10/08/18.
6. The claimant viewed his UI Online inbox on 10/09/18 and 10/22/18.
7. The claimant filled out an appeal form for Issue Identification Number 0027 3210 13-01. He signed the appeal form. He dated the appeal form 11/20/18. He mailed the appeal form to the DUA via the U.S. mail. The appeal form was postmarked on 11/20/18.
8. The DUA sent a questionnaire to the claimant. The questionnaire features the question, "When did you send your *Request for Appeal*?" The claimant responded, "was out of the country was [sic] notification was send [sic]."
9. The claimant was not out of the United States in the period 10/08/18 through 10/31/18.
10. The DUA created a disqualification notice for Issue Identification Number 0028 0344 02-01. This disqualification notice is dated 12/12/18. This disqualification notice indicates that the claimant appealed late on Issue Identification Number 0027 3210 13-01 and that the DUA will not accept the appeal.
11. The disqualification notice for Issue Identification Number 0028 0344 02-01 indicates that the claimant could appeal it. The disqualification notice reads, in part, "If you want an appeal, you must request a hearing. The filing deadline is 10 calendar days after the notice's mailing; 30 calendar days with good cause for the delay; or, in some cases, 60 calendar days if you did not receive the determination in your chosen language."
12. The DUA transmitted the disqualification notice for Issue Identification Number 0028 0344 02-01 to the claimant's UI Online inbox on 12/12/18.

13. The claimant viewed his UI Online inbox on 12/13/18, 12/18/18, and 12/26/18.

14. The claimant filled out an appeal form for Issue Identification Number 0028 0344 02-01. On the appeal form, the claimant wrote, "I was out of the country. I missed the notice that's the reason for late request." He signed the appeal form. He dated the appeal form 12/26/16. He mailed the appeal form to the DUA via the U.S. mail. The appeal form was postmarked in January 2019.

### 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 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. As discussed more fully below, we agree that the claimant has not shown that he is entitled to a hearing.

As correctly noted in the decision, the claimant did not timely appeal either of the notices sent to him by the DUA. The time limits for requesting a hearing are set forth in 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. . . .

If a hearing is requested beyond thirty days from the determination, 430 CMR 4.15, provides that the 30-day limitation not apply where the party establishes that:

(1) A Division employee directly discouraged the party from timely requesting a hearing and such discouragement results in the party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing;

(2) The Commissioner's determination is received by the party beyond the 30 day extended filing period and the party promptly files a request for hearing;

(3) The Commissioner's determination is not received and the party promptly files a request for a hearing after he or she knows that a determination was issued.

(4) An employer threatened, intimidated or harassed the party or a witness for the party, which resulted in the party's failure to file for a timely hearing.

As to Issue ID 0027 3210 13, which was the determination addressing the underlying RESEA disqualification, we conclude that the review examiner's legal conclusions are supported by substantial and credible evidence and free from error of law. The review examiner correctly applied 430 CMR 4.15, because the claimant's appeal was submitted to the DUA more than thirty calendar days after the issuance of the determination on October 8, 2018, and he failed to meet any of the exceptions listed.

As to the review examiner's discussion of the late appeal of Issue ID 0028 0344 02, we disagree with the review examiner's legal conclusions. For that appeal, the review examiner also applied the justification standard contained within 430 CMR 4.15. However, the record does not support a conclusion that the claimant submitted the appeal for this issue more than thirty days after issuance of the determination on December 12, 2018. The appeal for the issue is postmarked in January of 2019. *See* Finding of Fact # 14 and Exhibit 10, p. 4. Because the determination was issued on December 12, 2018, a January mailing date may or may not be beyond thirty days. However, the DUA stamped the claimant's appeal as being received on January 9, 2019. *See* Exhibit 10, p. 1. Thus, it must have been mailed before January 9, 2019. This being the case, the appeal had to have been mailed less than thirty days after the December 12, 2018 determination.

Therefore, the standard to be applied for the late appeal of Issue ID 0028 0344 02 is the good cause standard provided in 430 CMR 4.14. Under that regulation, good cause for a late appeal will be found if the claimant can show that "circumstances beyond his or her control prevented the filing of a request for a hearing within the prescribed ten day filing period." Nothing in the findings suggests that something beyond the claimant's control prevented him from filing his appeal in a timely manner. The review examiner concluded the following in Part III of his decision:

In the hearing, the claimant testified that he appealed Issue Identification Number [00]28 0344 02-01 late because he thought the appeal deadline was thirty days and because he thought he had a job "lined up." These are not acceptable reasons for a late appeal under 430 CMR 4.15. The disqualification notice featured appeal instructions that indicated the appeal deadline was ten days.

The stated reasons also do not constitute good cause for a late appeal under 430 CMR 4.14.

We, therefore, conclude as a matter of law that the review examiner's decision to deny the claimant a hearing on the merits of the October 8, 2018, notice of disqualification is supported by substantial and credible evidence and free from error of law.

The review examiner's decision is affirmed.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – March 12, 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/rh