

**Board of Review
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Issue ID: 0028 3621 94

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, after she submitted an untimely appeal of a determination issued by the DUA on March 19, 2018. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On March 19, 2018, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed that determination in December of 2018. On January 12, 2019, the DUA sent the claimant a determination which stated that “your reason(s) for not filing within 10 days do not constitute good cause. Therefore, you are not entitled to a hearing on the determination at issue.” The claimant timely appealed the January 12, 2019, determination and attended the hearing. In a decision rendered on March 5, 2019, the review examiner affirmed the agency’s determination that the claimant was not entitled to a hearing on the March 19, 2018, determination. The review examiner concluded that the claimant did not have justification for her late appeal pursuant to the provisions of G.L. c. 151A, § 39(b), and 430 CMR 4.15. The Board accepts the claimant’s application for review.

Findings of Fact

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

1. On 12/13/17, the claimant filed a claim for unemployment benefits effective 12/10/17.
2. The claimant selected to be communicated with electronically by DUA and an inbox was created for the claimant for electronic communication with the unemployment agency.
3. On 03/19/18, a “Notice of Disqualification” was sent electronically to the correct electronic address of record as provided by the claimant.
4. The claimant received the notice without any delay to her DUA inbox.
5. The disqualification was related to a failure to complete a RESEA Review timely.

6. The deadline to file a timely appeal was 03/29/18.
7. The claimant (appellant) filed a request for a hearing on that RESEA determination on 12/17/18 (the 273rd day after the determination was issued).
8. The claimant had stopped checking her DUA inbox when, for a time, she returned to work. The claimant requested a hearing after her unemployment claim, effective 12/10/17, had expired.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's findings of fact, save for Finding of Fact # 7, are supported by substantial and credible evidence in the record. In Finding of Fact # 7, the review examiner states that the claimant filed her appeal on December 17, 2018. This is not supported by the record, because Exhibit # 14 shows only that the claimant's appeal was *received* by the DUA on December 17, 2018. The claimant dated her appeal December 12, 2018, and the postmark is difficult to read. We accept the appeal as being filed on or about December 12, 2018. We note, of course, that this is well beyond the 10-day filing deadline, and even beyond the thirty-day "good cause" extended filing period provided for in 430 CMR 4.14. Consequently, the justification standard, as laid out in 430 CMR 4.15, is the appropriate standard to apply in this matter.

During the hearing, and again in her appeal, the claimant asserts that she has justification for the late appeal, because she was discouraged by an agency employee from appealing sooner. *See* 430 CMR 4.15(1). We first note that the review examiner did not make findings indicating that any discouragement occurred, thus indicating that he did not find the claimant's testimony on this point to be credible. McDonald v. Dir. of Division of Employment Security, 396 Mass. 468, 470 (1986) (review examiner not required to believe self-serving, unsupported evidence, even if it is uncontroverted).

We further note that the evidence in the record does not compel a conclusion that there was discouragement. When asked during the hearing why she delayed in appealing the March 19, 2018, determination, the claimant testified that she stopped claiming benefits in February of 2018. She "didn't think [she] needed to do anything after speaking to a representative." Regarding what this DUA representative told her, the claimant testified, "he told [her] all [she] had to do was decline benefits." She testified that she spoke to the representative over the phone, that she did not know what part of the agency the representative was in, that she told him she was getting a job, and that the name of the representative was "Matthew." She also testified that she started the job in the third week of February.¹

¹ While not explicitly incorporated into the review examiner's findings, this information is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

To the extent that the claimant suggested that the conversation with the representative happened in February of 2018, he could not have discouraged her from appealing a determination which was issued on March 19, 2018. Moreover, in her appeal to the Board, the claimant states the following:

In the midst of my employment, March 22, 2018, I contacted DUA again in regards to the document sent March 19, 2018. The representative took my information down and looked into my case. . . . As the representative read the notification, questions were asked such as, if I was still had Full-Time employment. I responded to inform the representative “I had indeed maintained a Full-Time Permanent Position”. I then proceed to asked if there needed to be response or correspondent sent for this notice to uphold the determination for ineligibility due to being accurate—I was employed Full-Time. The representative advised that no further actions were necessary since there was no benefits requested at the time and I was not disputing the disqualification of ineligibility.

Insofar as the claimant is arguing that a representative discouraged her on March 22, 2018 from appealing the March 19, 2018, determination, the claimant has not shown through substantial and credible evidence that this occurred. Exhibit # 6 shows that the claimant viewed her UI Online inbox on February 16, 2018, May 16, 2018, and then again in June of 2018. No activity is shown in March of 2018, which would indicate that the claimant was prompted to call the DUA after seeing the March 19, 2018 determination. The claimant also wrote in her December, 2018, appeal that she was “instructed to clear these notifications before payment could be disbursed. I was employed at this time. Did not claim benefits and did not attend UI RESEA program due to being employed.” *See* Exhibit # 14, page 1. Nothing is mentioned about a DUA discouraging her from appealing the March 19, 2018 determination in February of 2018, March of 2018, or at any other time. Taken together, it does not appear that the claimant viewed the determination in March of 2018, and only took action in December of 2018, when she was out of a job and presumably when someone from DUA encouraged her to appeal the March 19, 2018, determination.

In short, the record shows that the claimant was properly sent notice of the determination in March of 2018. Although properly informed of the determination, the claimant did not view her UI Online inbox. As noted by the review examiner in his conclusion, this does not constitute justification for a late appeal under G.L. c. 151A, § 39(b), and 430 CMR 4.15.

The review examiner's decision is affirmed, as it is free from error of law. The claimant has not shown through substantial and credible evidence that there is justification for her late appeal pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.15.

BOSTON, MASSACHUSETTS
DATE OF DECISION – March 25, 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

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