

The employer's response to the agency's request for information was adequate, as the employer's response to the questions on the questionnaire was truthful and accurate based on the information available to the employer at the time.

**Board of Review
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Issue ID: 0029 2004 62

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) denying the employer relief of benefit charges. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with an effective date of December 30, 2018. The agency sent the employer a questionnaire to complete regarding the claimant's severance pay. The deadline to respond to the questionnaire was January 18, 2019. The employer returned the completed questionnaire to the agency on January 18, 2019. Subsequently, on January 30, 2019, the agency determined that the employer's response to the questionnaire was not timely and/or adequate. The employer appealed and attended the hearing. In a decision rendered on March 2, 2019, the review examiner affirmed the part of the agency determination that concluded the employer had not adequately responded to the agency's request for information, as required by G.L. c. 151A, § 38A, and as a result, the employer would not be relieved of benefit charges on account of any payment of benefits on the claim at issue. We accepted the employer's application for review.

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we remanded the case to the review examiner to obtain additional evidence about what the employer and its representative knew about the claimant's separation at the time it completed the DUA questionnaire. The employer attended the remand hearing and, thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner's decision, which concluded that, pursuant to G.L. c. 151A, § 38A, the employer's response to a request for information was inadequate, is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that at the time the employer returned the agency's questionnaire stating that the claimant had not received severance pay, the claimant had not yet signed the separation agreement that offered the claimant severance pay.

Findings of Fact

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

1. The claimant (Claimant Identification Number [X]) filed a claim for unemployment insurance benefits. The effective date of the claim is 12/30/18.
2. The claimant worked for the employer until 12/27/18. The employer discharged the claimant.
3. The employer (sic) offered a separation agreement to the claimant. The separation agreement included severance pay. The employer presented the separation agreement to the claimant on 12/27/18. The claimant signed the separation agreement and returned it to the employer on 1/28/19.
4. The DUA created Issue Identification Number 0028 7131 45-01. This issue involves the claimant and the employer. The DUA sent a severance pay questionnaire to the employer on this issue (Questionnaire 1). The DUA transmitted Questionnaire 1 to the employer's UI Online Inbox.
5. Questionnaire 1 was the first remuneration questionnaire that the DUA transmitted to the employer after the claimant established her claim.
6. The employer's agent filled out Questionnaire 1 and returned it to the DUA on 1/18/19. Questionnaire 1 was due on 1/18/19.
7. Questionnaire 1 features a prompt that reads, "Tell us about the person filling out this form." The employer or its agent reported a name (MS) and the title "Senior Unemployment Benefits Specialist."
8. Questionnaire 1 features the question, "Did this claimant receive any severance pay beyond his/her earned wages?" The employer's agent responded, "No."
9. It is unknown whether the employer informed the person responsible for filling out Questionnaire 1 that the claimant had signed the separation agreement and would receive severance pay.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We set aside Consolidated Finding # 9, which states that it is unknown whether the employer informed the person who filled out the questionnaire that the claimant had signed the separation agreement and would receive severance pay. This finding implies that at

the time the questionnaire was filled out and submitted by the employer's representative, the employer knew that the claimant would receive severance pay. However, Consolidated Findings of Fact # 3 and # 6 clearly establish that at the time the employer submitted its questionnaire, the claimant had not yet accepted the severance pay. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, however, we reject the review examiner's legal conclusion that the employer's response to the agency's request for information was inadequate.

G.L. c. 151A, § 38A, provides, in pertinent part, as follows:

(a) If the director, or the director's authorized representative, determines, after providing written or electronic notice to the employer, that a payment of benefits was made because the employing unit, or an agent of the employing unit, was at fault for failing to respond timely or adequately to any request of the department for information relating to the claim for benefits, then: (i) the employing unit, except for employing units making payments into the Unemployment Compensation Fund under section 14A, shall not be relieved of charges on account of any such payment of benefits; and (ii) if the employing unit makes payments into the Fund under section 14A, it shall not be relieved from reimbursing the fund on account of any such payment of benefits. For purposes of this subsection, a response shall be considered inadequate if it fails to provide sufficient facts to enable the department to make the proper determination regarding a claim for benefits. A response shall not be considered inadequate if the department fails to ask for all necessary information, except in any case where there has been a failure to respond.

The only issue before the Board is whether the employer's response to Questionnaire # 1 was adequate within the meaning of G.L. c. 151A, § 38A. As noted by the review examiner in his decision, since the employer responded to the questionnaire by the deadline of January 18, 2019, the employer's party status is not in question.¹

The review examiner originally concluded that the employer's response to the questionnaire was inadequate, because the representative who filled out the questionnaire for the employer provided false information. Specifically, the review examiner concluded that the employer lied in the questionnaire when it relayed to the agency that the claimant had not received severance pay, when in fact, she had. We disagree with this conclusion. After remand, the review examiner found that the employer's representative submitted the agency's severance pay questionnaire on January 18, 2019, and the claimant signed and returned to the employer the separation agreement offering severance pay on January 28, 2019. These consolidated findings clearly establish that, at the time the employer submitted its questionnaire to the DUA, it did not know that the claimant would be receiving severance pay. Because the information the employer provided to the agency at that time was accurate, we conclude that its response to the severance pay questionnaire was adequate.

¹ See G.L. c. 151A, § 38(a).

We reverse the review examiner's decision that the employer is not entitled to a relief of charges on this claim, as its response to the agency's request for information complied with the adequacy requirement set forth in G.L. c. 151A, § 38A. We further note that the employer retains its party status, as it responded to the agency's request for information by the deadline provided by the agency, as required under G.L. c. 151A, § 38(a).

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 25, 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 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.

SVL/rh