

**Claimant, who went out of state to care for a sick relative, then filed her appeal the first business day after she returned to Massachusetts, established good cause for filing late pursuant to 430 CMR 4.14 (3).**

**Board of Review  
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Michael J. Albano  
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**Issue ID: 0029 2346 24**

## **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's late request for a hearing. The claimant's request for a hearing was denied on the ground that the claimant failed to establish good cause for filing her appeal past the ten-day deadline pursuant to G.L. c. 151A, § 39(b).

The claimant had filed a claim for unemployment benefits, which was denied in a determination issued by the agency on January 15, 2019. The claimant appealed to the DUA Hearings Department on January 28, 2019, after the ten-day deadline for filing such an appeal. In a determination issued on February 21, 2019, the DUA concluded that she did not have good cause for filing it after the deadline and ruled that she was not entitled to a hearing on the merits of her separation. The claimant appealed that determination. Following a hearing on the merits on the timeliness of the claimant's appeal, the review examiner affirmed the agency's determination in a decision rendered on May 17, 2019. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On September 23, 2019, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning the reason(s) the claimant filed her appeal late. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact.

The issue before the Board is whether the review examiner's original decision, which concluded that the claimant did not establish good cause for filing her appeal past the ten-day deadline, is supported by substantial and credible evidence and is free from error of law, where the consolidated findings after remand show that the delay was attributable to a serious family illness.

After reviewing the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we reverse the review examiner's decision.

### Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment, which were issued following the District Court remand, are set forth below in their entirety:

1. The effective date of the claim is 12/16/18.
2. When the claimant filed her claim for benefits, she elected to receive her correspondence via U.S. mail.
3. The DUA created a disqualification notice for Issue Identification Number 0028 3586 68-01 (Notice X). Notice X is dated 1/15/19. The DUA mailed Notice X to the claimant. The DUA transmitted Notice X to the claimant's UI Online inbox on 1/15/19.
4. Notice X features appeal instructions. The instructions read, in part, "This determination will become final unless: 1.) you request a hearing within ten calendar days after the date of mailing...You may file a request for a hearing by mail using a signed letter, completing the Request for Hearing information provided with this document, or by logging in to your online account."
5. The claimant's aunt fell ill. The claimant's aunt was in a hospital in Florida. The claimant went to Florida on 1/15/19 to visit her ill aunt.
6. The claimant returned home from Florida on 1/26/19. The claimant's daughter had put Notice X on a table. The claimant discovered Notice X on the table on 1/28/19 and read it. The claimant had not seen the contents of Notice X prior to 1/28/19. Prior to 1/28/19, the claimant did not know about the disqualification described in Notice X.
7. The claimant filled out the appeal form for Notice X on 1/28/19. The claimant signed the form. The claimant dated the form 1/19/19. This was a mistake. The claimant's husband drove the claimant to the DUA's Boston office on 1/28/19. The claimant submitted the appeal form to the DUA on 1/28/19. The appeal is stamped as received on 1/28/19.

### Ruling of the Board

In accordance with our statutory obligation, we review the record and the original 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.

The review examiner initially concluded that the claimant did not have good cause for failing to timely appeal the Notice of Disqualification sent to her by the DUA. G.L. c. 151A, § 39(b), 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. . . .

Under G.L. c. 151A, § 39(b), the claimant has the burden of proof to establish that she had "good cause" for requesting a hearing between 11 and 30 days after the underlying determination was issued. The DUA's regulation at 430 CMR 4.14, provides, in pertinent part, as follows:

The Commissioner may extend the ten day filing period where a party establishes to the satisfaction of the Commissioner or authorized representative that circumstances beyond his or her control prevented the filing of a request for a hearing within the prescribed ten day filing period.

The regulation sets forth 12 different circumstances which the DUA considers "good cause" for filing an appeal between 11 and 30 days after a determination is issued. Initially, the review examiner found that the claimant signed the appeal on January 19, 2019, but did not return it to the DUA until January 28, 2019, because she did not believe that weekends and holidays counted toward the ten-day appeal deadline. Under such circumstances, the review examiner properly concluded that the claimant's reason for filing late was not one of the 12 reasons considered "good cause" under 430 CMR 4.14.

After remand, the review examiner accepted as credible the claimant's assertion that, on the day the DUA issued the Notice of Disqualification regarding her separation (January 15, 2019), the claimant flew to Florida to visit her aunt, who was hospitalized. *See Consolidated Finding # 5.*

The claimant returned to Massachusetts on January 26, 2019, discovered the Notice on January 28, 2019, and submitted her appeal to the DUA in person later on January 28, 2019. *See Consolidated Finding # 6.* The claimant corroborated her testimony with email receipts of her airline tickets. *See Remand Exhibits ## 7 and 9.* The review examiner also accepted as credible the claimant's testimony that she misdated the appeal when she filed it on January 28, 2019, incorrectly writing January 19, 2019. *See Consolidated Finding # 7.* Thus, the claimant filed her appeal on the first business day after her return to Massachusetts.

This satisfies the requirement of 430 CMR 4.14(3), which allows good cause to be established for:

A documented serious illness or hospitalization of a party household member [sic] an immediate family member during the entire ten day filing period or a portion of the appeal period if the party's ability to timely appeal is thereby affected.

We, therefore, conclude as a matter of law that the claimant established good cause for filing her appeal beyond the ten-day period pursuant to G.L. c. 151A, 39(b), and 430 CMR 4.14(3).

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of Issue ID # 0028 3586 68.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 19, 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](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.

JPC/rh