Where the claimant was not given written information about filing an unemployment claim by his most recent employer, he is automatically entitled to have his claim pre-dated to his first week of total unemployment pursuant to G.L. c. 151A, § 62A(g), without any further need to show good cause.

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Member

Issue ID: 0030 2085 60

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 request that his unemployment claim be pre-dated to an earlier effective date. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant became separated from his employment on February 1, 2019. On March 11, 2019, the claimant filed an unemployment claim, which was deemed effective March 10, 2019. The claimant later requested that his claim be pre-dated to February 3, 2019. This request was denied in a determination issued by the DUA on April 12, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant via telephone, the review examiner affirmed the agency's initial determination and denied the pre-date request in a decision rendered on May 4, 2019.

The pre-date was denied after the review examiner determined that the claimant did not have good cause for failing to file his claim earlier and, thus, he was not eligible for earlier effective date of his claim pursuant to G.L. c. 151A, §§ 23(b) and 24(c), as well as 430 CMR 4.01(3) and 4.01(4). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the claimant's application for review and remanded the case in order to solicit additional testimony and evidence regarding when the employer provided the claimant with written information about unemployment benefits. Only the claimant attended in the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. 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 a pre-dated claim, is supported by substantial and credible evidence and is free from error of law, where the claimant's most recent employer failed to timely provide him with written information about unemployment benefits after he separated from employment.

Findings of Fact

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

1. The claimant worked full time as a union apprentice electrician from January 1, 2015 until February 1, 2019, when he was laid off due to a lack of work.

2. The employer is the claimant's personal friend.

3. On February 1, 2019. The employer told the claimant that they should be back to work in another week or two. The employer's projects were held up due to permitting issues with the town. The employer told the claimant to take a couple of weeks off or report to the union hall to request work from another union employer.

4. The claimant did not go to the union hall to look for work because he performed some work at his own house, while he waited for work from the employer.

5. On February 1, 2019, the employer did not advise the claimant to file an unemployment claim.

6. No one from the employer discouraged the claimant from promptly filing for unemployment benefits.

7. Two or three weeks after February 1, 2019, the employer instructed the claimant to file for unemployment benefits because he didn't have work available to offer the claimant.

8. The claimant didn't file for unemployment at that time because he had some money saved that he could live on.

9. The claimant didn't apply for a new job at his union hall because he preferred to work for only the employer. He didn't want to work for several union employers like other electrical apprentice employees.

10. On or about March 8, 2019, the employer told the claimant he still didn't have work for him and instructed him to file for unemployment benefits. That same day or the next day, the employer's secretary provided the claimant with the Department of Unemployment Assistance's brochure, which advised him of his right to file a claim for unemployment benefits and the procedure for filing the claim.

11. On March 11, 2019, the claimant filed an initial claim online for unemployment benefits effective March 10, 2019.

12. On March 26, 2019, the claimant requested a predate of his claim to February 3, 2019.

13. On April 12, 2019, the Department of Unemployment Assistance issued the claimant a Notice of Disqualification, which notified him he was not entitled to a predate under Section 23(b) of the Law for any week prior to March 10, 2019.

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 ultimate 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. However, as discussed more fully below, since the employer did not comply with the requirements of G.L. c. 151A, § 62A(g), we reject the review examiner's legal conclusion that the claimant is not entitled to a pre-date.

The review examiner's original decision only addressed whether the claimant had good cause for his failure to file his claim earlier pursuant to 430 CMR 4.01(3). However, the review examiner's decision failed to address G.L. c. 151A, § 62A(g), which provides in pertinent part as follows:

> Each employer shall issue to every separated employee, as soon as practicable, but not to exceed 30 days from the last day said employee performed compensable work, written information furnished or approved by said division which shall contain . . . instructions on how to file a claim for unemployment compensation . . . . Delivery is made when an employer provides such information to an employee in person or by mail to the employee's last known address. The waiting period under section 23 for an employee who did not receive the information required by this paragraph and who failed to file timely for benefits, shall be the Sunday of the initial week such employee would have been eligible to receive unemployment compensation. Each employer shall have the burden of demonstrating compliance with the provisions required herein.

The claimant became separated from his most recent employer on February 1, 2019. However, the employer did not provide the claimant with written information about unemployment benefits until over thirty days later, on approximately March 8, 2019. This was in violation of the requirements of G.L. c. 151A, § 62A(g). In light of these facts, we conclude that the claimant is automatically entitled to have his claim pre-dated. Where the employer failed to provide the claimant with written information about unemployment benefits, there is no additional need under this section of law to show any form of good cause. This is because the statute uses mandatory language ("[the] waiting period . . . for an employee who did not receive the information required . . . shall be the Sunday of the initial week such employee would have been eligible . . ."). The fact that the claimant may have already been aware of his right to apply for unemployment benefits is not a consideration listed in the above-cited statute.

We, therefore, conclude as a matter of law that, in light of G.L. c. 151A, § 62A(g), the claimant is automatically entitled to have his claim pre-dated.

The review examiner's decision is reversed. The claimant's unemployment claim shall effective February 3, 2019.



BOSTON, MASSACHUSETTS
DATE OF DECISION - August 29, 2019

Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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.

JRK/rh