Where the claimant's most recent employer did not give written information about filing an unemployment claim, she is automatically entitled to have her claim predated to her 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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Issue ID: 0031 5356 66

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 to allow an earlier effective date of her unemployment claim. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with the DUA effective June 30, 2019. The claimant later requested that her claim be predated to the week beginning June 23, 2019. This request was denied in a determination issued by the DUA on September 25, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied the predate request in a decision rendered on October 12, 2019.

Benefits were denied after the review examiner determined that the claimant did not have good cause for failing to file her claim earlier and, thus, was not eligible to have an earlier effective date of her claim under G.L. c. 151A, §§ 23(b), and 24(c), and 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 remanded the case to the review examiner to obtain additional evidence pertaining to the claimant's receipt of information on how to file a claim. The claimant attended 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 on appeal is whether the review examiner's conclusion that the claimant is not entitled to a predate on her claim is supported by substantial and credible evidence and is free from error of law, where the claimant's most recent employer failed to provide her with written information on how to file a claim for unemployment benefits after she separated from employment.

Findings of Fact

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

1. The claimant has worked for twenty years for the employer, a transportation company, as a school bus driver.

2. During a group employee meeting held by the employer in early June 2019 that the claimant attended, the owner verbally instructed all employees to ensure they filed their unemployment claims when they were laid off.

3. The employer did not provide the claimant written instructions on filing a claim for unemployment benefits.

4. The claimant was laid off from work on June 18, 2019. That week the claimant reopened her claim for benefits. The benefit year end date of the claim was June 22, 2019.

5. On June 23, 2019, the claimant certified her benefits online for the week ending June 22, 2019.

6. The claimant did not file a new claim during the week of June 23, 2019, because she wouldn't receive payment for that week as it would be considered a wait week.

7. On June 30, 2019, the claimant filed a new claim for benefits effective June 30, 2019.

8. On July 9, 2019, the claimant requested to predate her claim to the week beginning June 23, 2019.

9. On September 25, 2019, the Department of Unemployment Assistance issued the claimant a Notice of Disqualification, which notified her she was not entitled to a predate under Section 23(b) of the Law for any week prior to June 30, 2019.

10. The claimant returned to work for the employer in September 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 consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original 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, we believe that the consolidated findings support the allowance of an earlier effective date of the claim.

The question before the Board is whether the claimant is entitled to a predate of her unemployment claim pursuant to 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 her most recent employer on June 18, 2019, and reopened an existing 2018 claim for benefits that had a benefit year end date of June 22, 2019. Due to some confusion on the claimant's part, she waited until June 30, 2019, to file her current unemployment claim, and she subsequently requested to have the claim predated to June 23, 2019. In her original decision, the review examiner denied a predate, reasoning that the claimant did not have good cause for her failure to file her claim prior to June 30th. We remanded the case to obtain additional evidence regarding what information, if any, the employer provided to the claimant on how to file for benefits.

After remand, the review examiner found that at the time of separation, the employer did not give the claimant any written information on how to file for unemployment benefits, as mandated by G.L. c. 151A, § 62A(g). In light of these facts and the applicable law, we conclude that the claimant is automatically entitled to have her claim predated. Where the employer failed to provide the claimant with written information on how to file for unemployment benefits, there is no additional need under this section of law to show any form of good cause for not filing the claim earlier. 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 . . ." (emphasis added). Since the claimant separated from the employer on June 18, 2019, and her 2018 claim benefit year ended on June 22, 2019, her first possible week of eligibility on the 2019 claim began on June 23, 2019, and her claim will be predated to that date.

We, therefore, conclude as a matter of law that under G.L. c. 151A, § 62A(g), the claimant is automatically entitled to have her claim be effective at an earlier date, without a showing of good cause.

The review examiner's decision is reversed. The claimant is entitled to a predate on her unemployment claim, effective June 23, 2019. We note that the Notice of Allowance of Application for Review issued on December 20, 2019, which states that the case is once again being remanded for additional evidence, was sent out in error. This Notice is hereby rescinded and should be disregarded by the parties.



BOSTON, MASSACHUSETTS
DATE OF DECISION - January 2, 2020

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