

**Board of Review
19 Staniford St.
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0032 8520 39

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 justification for filing his appeal past the ten-day deadline pursuant to G.L. c. 151A, § 39(b). We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant had filed a claim for unemployment benefits, which was denied in a determination issued by the agency on November 14, 2019. The claimant appealed to the DUA Hearings Department on January 13, 2020, more than 30 days after the ten-day deadline for filing such an appeal. In a determination issued on January 22, 2020, the DUA concluded that the claimant did not have justification for filing his appeal after the deadline, and ruled he was not entitled to a hearing on the merits of his 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 February 25, 2020. The Board accepted the claimant's application for review.

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 decision is based on substantial evidence. However, we believe the review examiner's findings of fact compel a conclusion that the claimant established justification for failing to timely file his appeal.

The review examiner found that the claimant did not receive an email from the DUA to his personal email account notifying the claimant that he had important documents in his UI Online Inbox, which required review. The right to receive notice and an opportunity to be heard is a fundamental right. The Due Process Clause of the Fourteenth Amendment prohibits the States from depriving any person of property without providing notice and an opportunity to be heard. Dusenbery v. United States, 534 U.S. 161, 167 (2002). Specifically, it requires "notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . . ." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (further citations omitted). Since the claimant did not receive a DUA communication to look for the determination, we believe that he did not receive the requisite notice necessary to timely appeal.

We, therefore, conclude as a matter of law that the claimant established justification for filing his appeal beyond the statutory appeal period pursuant to G.L. c. 151A, 39(b), and 430 CMR 4.15.

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of Issue ID # 0032 4625 51.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 9, 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
(See Section 42, Chapter 151A, General Laws, Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is ordinarily thirty days from the mail date on the first page of this decision. However, due to the current COVID-19 (coronavirus) pandemic, the 30-day appeal period does not begin until May 4, 2020¹. If the thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the next business day 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.

JPC/rh

¹ See Supreme Judicial Court's Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (CORONAVIRUS) Pandemic, dated 4-1-20.