

**Claimant was automatically entitled to a pre-date where his employer failed to provide written information about how to file for benefits upon separation.**

**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: 0035 1409 00**

### 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. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

After separating from his employer, the claimant filed a claim for unemployment benefits with the DUA on March 23, 2020. The claim had an effective date of March 22, 2020. The claimant requested that his claim be pre-dated, but this request was denied in a determination issued on April 8, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's initial determination and denied the pre-date request in a decision rendered on July 30, 2020.

The pre-date was denied after the review examiner determined that the claimant had been "informed" by the employer to apply for unemployment benefits, and, thus, he was not eligible to have an earlier effective date of his claim under G.L. c. 151A, §§ 23(b) and 24(c). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case back to the review examiner to make a subsidiary finding of fact from the testimony and evidence on record. 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-date, is supported by substantial and credible evidence and is free from error of law, where the claimant's most recent employer failed to provide him with written information about how and where to file a claim for unemployment benefits when he became separated.

### Findings of Fact

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

1. 03/14/2020 was the claimant's last physical day at work for the employer, at which point he was laid off.

2. The employer did not provide the claimant with written information about applying for unemployment insurance benefits.
3. The claimant contacted a Department of Unemployment Assistance representative on an unknown date and filed his claim.
4. The claimant's unemployment claim was effective 03/22/2020.
5. The claimant was not locked out of his account and has never been locked out of his account.
6. The claimant requested his unemployment claim become effective 03/15/2020.

### 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. 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 conclusion that the claimant is not entitled to a pre-date.

In analyzing the claimant's eligibility for a pre-date, we look to G.L. c. 151A, § 62A(g), which provides, in pertinent part, as follows:<sup>1</sup>

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.

Initially, the review examiner found the employer "informed" the claimant to apply for unemployment benefits. After remand, however, the review examiner found that the employer did not provide the claimant with written information about filing for unemployment benefits. *See* Consolidated Finding # 2.

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<sup>1</sup> We recognize that G.L. c. 151A, § 62A(g), was not specifically noticed to the parties as a section of law which was to be considered at the hearing. However, the claimant is the only interested party to this case and application of this statutory provision is to his benefit and will not leave the claimant aggrieved.

Written notice instructing the claimant how to file a claim for benefits is required by G.L. c. 151A, § 62A(g). In light of the facts, the claimant is automatically entitled to have his claim pre-dated. Where the claimant never received any written information from the employer about how to file a new claim, there is no need under this section to also show any form of good cause for not filing the claim earlier. This is because the statute uses mandatory language (“[t]he 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 good-cause analysis used by the review examiner was not necessary and is legally erroneous, given the applicability of G.L. c. 151A, § 62A(g).

We, therefore, conclude as a matter of law that the review examiner’s decision to deny the pre-date was based on an error of law, because, under G.L. c. 151A, § 62A(g), the claimant is automatically entitled to have his claim be made effective earlier without a showing of good cause.

The review examiner’s decision is reversed. The claimant is entitled to a pre-date on his unemployment claim. The effective date of the claim shall be March 8, 2020, which is the week the claimant became separated from employment.



**BOSTON, MASSACHUSETTS**

**DATE OF DECISION - September 28, 2020**

Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, Esq. 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 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.

JPCA/rh