

**In light of the mandatory language under G.L. c. 151A, § 62A(g), the claimant was entitled to have her claim pre-dated by a year and three months because she never received written notice from her employer about how to seek unemployment benefits. The claimant's knowledge that she could file a claim is immaterial.**

**Board of Review  
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**Issue ID: 0038 5388 24**

### 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 an earlier effective date for a claim for unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her position with the employer on October 26, 2018. She filed a claim for unemployment benefits with the DUA on January 31, 2020, seeking to pre-date her claim to June, 2019.<sup>1</sup> Her request to pre-date the claim was denied in a determination issued on May 11, 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 request to pre-date the claim in a decision rendered on August 14, 2020. We accepted the claimant's application for review.

An earlier effective date was denied after the review examiner determined that the claimant did not have good cause for failing to file a timely claim for benefits, and, thus, she was not entitled to have her claim pre-dated to 2019 under G.L. c. 151A, §§ 23(b) and 24(c). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, and additional written comments which the claimant submitted to the Board.

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 her with written information about how and where to file for unemployment benefits after she stopped working, as required under G.L. c. 151A, § 62A(g).

### Findings of Fact

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

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<sup>1</sup> The claimant's request to predate her claim to June, 2019, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

1. The claimant worked for the instant employer from 12/8/75 to 10/26/18.
2. The instant employer did not give the claimant information in writing about her right to file an unemployment insurance claim when she separated from employment.
3. The claimant knew she could file a claim for unemployment insurance benefits.
4. The claimant researched online how to file an unemployment insurance claim.
5. The Massachusetts Department of Unemployment Assistance website provides instructions on how to file a claim online and via telephone.
6. The claimant first tried to complete her unemployment insurance claim online on or about 6/1/19, but was unable to progress past the first page of the application each time she tried to file a claim.
7. The claimant did not try to file a claim again until on or about 12/1/19, as she dealt with some personal issues, including an ill pet and broken car windshield, between June and December, 2019.
8. The claimant continued to try to file her claim via UI Online in December, 2019, but was unable to successfully file a claim.
9. The claimant first started trying to reach DUA via telephone to file a claim in January, 2020.
10. On 1/31/20, the claimant reached a DUA representative via telephone and successfully filed a claim, effective 1/26/20.

### 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 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 findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, because the claimant's most recent employer failed to 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 have her claim pre-dated.

The legislature enacted G.L. c. 151A, § 62A(g) in order to ensure that workers are informed of the process for seeking unemployment benefits. It 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* the name and mailing address of the employer, the identification number assigned to the employer by said division, *instructions on how to file a claim for unemployment compensation*, the address and telephone number of the regional office which serves the recipient, and the telephone number of the teleclaim information line. 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. (Emphasis added.)

In her decision, the review examiner denied the claimant's request for a pre-date after concluding that the claimant did not have good causing for failing to file her claim for unemployment benefits shortly after separating from the employer. The review examiner arrived at this conclusion after finding that the claimant was aware she could file a claim when she separated from her employer in 2018, but she did not file until January 31, 2020. We disagree with the review examiner's conclusion, as the claimant's knowledge regarding her right to file a claim for unemployment benefits is immaterial in this case.

Pursuant to G.L. c. 151A, § 23(b), 24(c), and 430 CMR 4.01(3) and 4.01(4), a claim effective date may be pre-dated under certain circumstances, if good cause for the delay in filing is established. The review examiner in this case decided that the claimant did not provide good cause. However, G.L. c. 151A, § 62A(g), mandates granting a pre-date if the claimant's former employer does not provide her with written information about how to file an unemployment claim. The Legislature placed the burden upon the employer to prove that it provided the required written notice under G.L. c. 151A, § 62A(g).

Because the review examiner found that the claimant's previous employer did not provide her with written notice about how to file an unemployment claim, the claimant is automatically entitled to have the effective date of her claim made retroactive to the Sunday of the initial week that she would have been eligible for unemployment compensation after she separated from the employer. Although the claimant has previously expressed to the agency that she is requesting a pre-date to June, 2019, she is entitled to a pre-date to Sunday, October 28, 2018, since she separated from the employer on October 26, 2018.

We, therefore, conclude as a matter of law that, pursuant to G.L. c. 151A, § 62A(g), the claimant is entitled to have the waiting period under G.L. c. 151A, § 23, be the Sunday of the initial week that the claimant would have been eligible for unemployment benefits.

The review examiner's decision is reversed. The claimant is entitled to have the effective date on her claim pre-dated to October 28, 2018.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 29, 2020**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**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. 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](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.

SVL/rh