

**Hearing requests filed several days late during the period that the Supreme Judicial Court tolled all statutory deadlines are not untimely under G.L. c. 151A, § 39(b).**

**Board of Review  
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**Issue ID: 0039 9830 70**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), which concluded that the claimant did not have good cause for filing a late request for a hearing on a determination sent to her on May 4, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On April 8, 2020, the DUA mailed the claimant a Notice of Disqualification stating that she was not eligible for benefits under G.L. c. 151A, §§ 29 and 1(r), in DUA Issue ID # 0037 1864 80 (the first Notice). The claimant submitted a hearing request 14 days after this first Notice was issued. On May 4, 2020, DUA issued another Notice of Disqualification stating that under G.L. c. 151A, § 39, the claimant did not have good cause for submitting her appeal after the statutory deadline. This new Notice was Issue ID # 0039 9830 70 (the second Notice). The claimant requested a hearing on this second notice 11 days after it was issued. Following a hearing, the review examiner concluded that the claimant did not have good cause for filing a late appeal on the second Notice pursuant to G.L. c. 151A, § 39(b), in a decision rendered on August 12, 2020. As a result of the review examiner's decision, the claimant was not entitled to a hearing on the underlying disqualification. The Board accepts 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 reverse the review examiner's decision for the reason discussed below.

Ordinarily, a claimant is required to file a request for a hearing within the statutory deadline set forth under G.L. c. 151A, § 39(b), which provides, in pertinent part, as follows:

Any interested party notified of a determination may request a hearing within ten days after delivery in hand by the commissioner's authorized representative, or mailing of said notice, unless it is determined . . . that the party had good cause for failing to request a hearing within such time. In no event shall good cause be

considered if the party fails to request a hearing within thirty days after such delivery or mailing of said notice. . . .

However, on April 6, 2020, the Massachusetts Supreme Judicial Court (SJC) issued an Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic, which tolled all deadlines set forth in statutes from March 17 through May 3, 2020.<sup>1</sup> Effective May 4, 2020, the SJC implemented its Updated Order extending the tolling period through June 1, 2020.<sup>2</sup> The following month, the Court issued a Second Updated Order further extending the tolling period through June 30, 2020.<sup>3</sup> These Orders had the effect of tolling all statutory appeal deadlines from March 17 through June 30, 2020.

In the present case, the Notice of Disqualification in Issue ID # 0037 1864 80 (the first Notice) was issued on April 8, 2020. The Notice of Disqualification in Issue ID # 0039 9830 70 (the second Notice) was issued on May 4, 2020. Both were issued during the period that the SJC suspended all statutory deadlines. This means that the claimant had until July 1, 2020, to appeal both issues. Since she filed a hearing request for each issue before July 1, 2020, they are timely.

We, therefore, conclude as a matter of law that under G.L. c. 151A, § 39(b), the claimant did not file an untimely request for a hearing in either Issue ID # 0037 1864 80 (the first Notice) or Issue ID # 0039 9830 70 (the second Notice), because the Massachusetts Supreme Judicial Court had tolled the 10-day appeal deadline.

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of her underlying disqualification under G.L. c. 151A, §§ 29 and 1(r), in Issue ID # 0037 1864 80.



**BOSTON, MASSACHUSETTS**

Paul T. Fitzgerald, Esq.  
Chairman

**DATE OF DECISION - September 11, 2020**



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)**

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<sup>1</sup> See paragraph 12.

<sup>2</sup> See Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic, effective May 4, 2020, paragraph 12.

<sup>3</sup> See Second Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic, effective June 1, 2020, paragraph 13.

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.

AB/rh