

**Board of Review  
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Chairman  
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Member  
Michael J. Albano  
Member**

**Issue ID: 0040 1039 96**

## **ORDER TO RESCIND DENIAL AND RE-ISSUE FINAL DECISION**

On February 2, 2021, the Board of Review denied the claimant's application for review of a hearing decision by a review examiner in the Department of Unemployment Assistance (DUA). Subsequently, it came to the Board's attention that the claimant had timely submitted additional appeal documents via Certified U.S. Mail, which had not been delivered to the Board before its initial review of the claimant's appeal. Because the Board had not reviewed all of the materials timely submitted as part of the claimant's appeal, we hereby rescind the Denial of Application for Review that was issued on February 2, 2021, and re-issue this decision with new appeal rights.

### Introduction and Procedural History of this Appeal

On October 4, 2019, the agency initially determined that the claimant was not entitled to unemployment benefits based on his separation from employment, disqualifying him under G.L. c. 151A, § 25(e)(1).<sup>1</sup> On April 25, 2020, the claimant filed an appeal of that determination electronically, 204 days after it had been issued. On August 29, 2020, the agency issued a Notice of Disqualification concluding the claimant failed to establish that he had justification for untimely filing his appeal, and therefore he was not entitled to a hearing on the merits of his separation case. The claimant requested a hearing of that determination before a review examiner, which only he attended.

In a decision rendered on December 11, 2020, the review examiner affirmed the agency determination, concluding that the claimant failed to establish justification for filing an appeal beyond 30 days of the date of the mailing of the October 4, 2019, Notice of Disqualification, and, thus, was not entitled to a hearing on the merits of his separation case pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.15.

The claimant has appealed the review examiner's decision to deny him a hearing on the merits of his separation case. We review, pursuant to our authority under G.L. c. 151A, § 41.

### Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and all of the documents constituting the claimant's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.

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<sup>1</sup> See Issue ID # 0032 1835 81.

We note that the documents obtained after our initial review detail the claimant's personal circumstances between the time he separated and filed for unemployment benefits in or about September of 2019, until he returned to his own home with the onset of the COVID-19 pandemic in March of 2020, as well as his attempts to pursue his unemployment benefits thereafter. These documents also provide the claimant's description of his communications with DUA staff from March of 2020 to date.

However, the claimant's further representations on appeal do not alter our analysis of this case. The review examiner explicitly found that the claimant did not pursue his appeal of the October 4, 2019, disqualification, because he had the "blessing" of the employer's principal and superintendent for his unemployment claim, he considered it "money in the bank," he was "not overly concerned about it," and his family's health concerns were more pressing. *See* Finding of Fact # 10. We note that the review examiner's finding accurately reflects the claimant's sworn testimony during the hearing as to why he had not pursued his appeal sooner. None of these reasons is among the four criteria under 430 CMR 4.15, which establish justification for finding an appeal that was submitted more than 30 days after a determination was issued to be timely.

The review examiner's decision is affirmed. The claimant did not establish justification for untimely filing his appeal pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.15. He is not entitled to a hearing on the merits in Issue ID # 0032 1835 81.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 11, 2021**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, 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 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