

**Employer's agent received an influx of unemployment cases due to the COVID-19 pandemic and therefore was unable to file an appeal until 29 days after the deadline elapsed. Because the delay was directly attributable to the effect of the COVID-19 pandemic, the employer's agent had good cause under the DUA emergency regulations in 430 CMR 23.05.**

**Board of Review  
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**Issue ID: 0041 5206 75**

### Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny the employer a hearing on the merits in connection with a determination to award benefits to the claimant, dated April 3, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her position with the employer on February 14, 2020. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on April 3, 2020. The employer appealed the determination to the DUA hearings department after the 10-day filing period. On May 23, 2020, the DUA sent the employer another determination, this time stating that there was no justification to consider the employer's appeal timely. The employer sought a hearing on this timeliness determination. Following a hearing on the merits attended by the employer, the review examiner affirmed, denying the employer's request for a hearing on the April 3, 2020, determination. We accept the employer's application for review.

The review examiner reached her decision after concluding that the employer did not have good cause for failing to timely appeal the April 3, 2020, determination pursuant to G.L. c. 151A, § 39(b) and 430 CMR 4.15. 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, and the employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the employer is not entitled to a hearing because it had not articulated good cause for filing a late appeal, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

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

1. A Notice of Approval was electronically issued to the employer's UI Online inbox on 4/3/2020.

2. The employer's 3rd Party Administrator received the Notice of Approval through their UI Online inbox on 4/3/2020.
3. The employer's agent received the document on 4/3/2020, however due to the influx of claims due to COVID-19, they were unable to respond until 5/12/2020.
4. On 5/12/2020, the employer's agent submitted an appeal request online.

### Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate 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, we reject the review examiner's legal conclusion that the employer's agent did not articulate good cause for failing to file a timely appeal.

The unemployment statute sets forth a time limit for requesting a hearing. G.L. c. 151A, § 39(b), 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. . . .

In this case, the employer sought a hearing to appeal the April 3, 2020, Notice of Approval. In accordance with G.L. c. 151A, § 39(b), the deadline for filing an appeal was April 13, 2020. However, the employer's agent did not file the appeal until May 12, 2020, twenty-nine days after the deadline had elapsed. Finding of Fact # 3. Therefore, the question before us is whether the employer's agent articulated good cause for failing to timely file its appeal.

DUA regulations at 430 CMR 4.14 and 4.15 permit the agency to accept appeals submitted after the 10-day deadline under certain enumerated circumstances. In this case, we concur with the review examiner's conclusion that the employer's agent did not provide good cause for filing an untimely appeal within the meaning of 430 CMR 4.14 and 4.15. However, the DUA recently promulgated emergency regulations in response to the COVID-19 pandemic which incorporated additional exceptions to the ten-day appeal deadline.

The relevant portions of the emergency regulations in effect at the time are under 430 CMR 23.05<sup>1</sup>, which provides, in pertinent part, as follows:

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<sup>1</sup>COVID-19 Emergency Regulations at 430 CMR 23.00 (Mar. 16 – June 14, 2020).

In determining whether any party has good cause for lateness regarding a deadline set forth in M.G.L. c. 151A or 430 CMR 4.00, *et seq.*, . . . the department will consider whether COVID-19 prevented the party from meeting the deadline.

For purposes of this section: . . .

(ii) An employer will be considered prevented from meeting deadlines by COVID-19 if the employer's business operations are severely impacted by COVID-19.

We further note that pursuant to G.L. c. 30A and 801 CMR 1.02(3)(b), any party in an administrative hearing at DUA may be accompanied, represented and advised by an authorized representative. Authorized representatives, such as third-party agents, have the authority to exercise any rights and powers vested in the represented party by the Standard Rules of Adjudicatory Practice. 801 CMR 1.02(3)(c). As authorized representatives may exercise the same rights and powers as parties they represent, they must be subject to the same procedural regulations that apply to those parties. Therefore, we deem the emergency tolling provisions set forth at 430 CMR 23.05(ii) to apply to the agent filing the instant appeal on behalf of the employer.

We believe that our reasoning in this regard is consistent with the spirit and intent of 430 CMR 23.05(ii), which is to ensure that the unprecedented circumstances created by COVID-19 do not prevent interested parties from timely filing appeals of determinations issued by the DUA.

In this case, the employer's agent was unable to file an appeal in the instant case until May 12, 2020, because it received an abnormally large influx of unemployment cases as a result of the economic impact of the COVID-19 pandemic. Finding of Fact # 4. As such, the record demonstrates that the agent's regular business operations were severely impacted during the relevant timeframe.

We, therefore, conclude as a matter of law that the employer is entitled to a hearing on the merits of the DUA's April 3, 2020, determination awarding benefits, because the employer articulated good cause for missing the appeal deadline under 430 CMR 23.05.<sup>2</sup>

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<sup>2</sup> Also, on April 6, 2020, the Massachusetts Supreme Judicial Court (SJC) issued an Order Regarding Court Operations Under the Exigent Circumstances Created by COVID-19 (Coronavirus) Pandemic, which tolled all deadlines set forth in statutes from March 17 through May 3, 2020. *See* paragraph 12. Effective May 4, 2020, the SJC issued an Updated Order extending the tolling period through June 1, 2020. *See* Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic, effective May 4, 2020, paragraph 12. In light of these orders, the agent's appeal would be not be deemed late under G.L. c. 151A, § 39(b).

The review examiner's decision is reversed. The DUA shall schedule a hearing on the merits of the April 3, 2020, Notice of Approval as soon as possible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 21, 2020**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, 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.

LSW/rh