

The claimant filed her hearing request 31 days after the Notice was issued. However, it was during the period that the Supreme Judicial Court had tolled all statutory deadlines, and therefore it was not untimely under G.L. c. 151A, § 39(b).

**Board of Review
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Issue ID: 0043 3088 10

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 April 21, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On April 21, 2020, the DUA issued to the claimant a Notice of Disqualification in Issue ID # 0036 5515 38 (the first Notice) stating that she was not eligible for benefits under G.L. c. 151A, § 25(e)(1). The claimant submitted a hearing request 31 days after this first Notice was issued. On May 29, 2020, DUA issued another Notice of Disqualification (the second Notice) stating that the claimant did not have good cause for submitting her appeal after the statutory deadline. Following a hearing, the review examiner concluded that the claimant did not have good cause for filing a late appeal on the first 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.

Findings of Fact

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

1. The claimant opened an unemployment claim effective March 29, 2020. The claimant elected to receive correspondence electronically.
2. On April 21, 2020, the Department of Unemployment Assistance (DUA) issued the claimant Notice of Disqualification 0036 5515 38-01 stating that the claimant was disqualified under Section 25(e)(1) of the law because she left work rather than accepting a transfer to new duties.
3. On April 22, 2020, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Approval stating that the claimant was approved under a different section of the law.

4. Both determination notices described above stated that statute under which the claimant was approved or denied and a short explanation as to why she was approved or denied. The notice of Disqualification also each came with instructions on how to request a hearing on the determination. These instructions explained that the determination would become final unless the claimant requested a hearing within ten days of the date of mailing or within 11-30 days of mailing, if there was a good cause reason for the delay. In addition, it stated that in limited circumstances, a party may request a hearing after thirty calendar days.
5. The claimant is 76 years old. She is hard of hearing and has a 6th grade level of education. She is not computer literate. Her daughter and her grandson (age 24) assisted her with filing and managing her unemployment claim.
6. The claimant's daughter and nephew both viewed the Disqualification notice sent April 21, 2020, and the Approval Notice sent April 22 in the claimant's inbox. They did not read through the notices carefully. They also did not understand that a claimant could have more than one issue on a claim and that each issue would receive a separate determination with its own appeal rights. They assumed that the claim had been reviewed and that DUA had reversed its decision to deny the claimant benefits. They therefore did not take any action to appeal the Disqualification.
7. On April 27, 2020, DUA sent the claimant a request to have her doctor complete a health form. She gave the form to her doctor and was told that it was sent to DUA.
8. The claimant and her family assumed that the delay in the claimant receiving benefits was due to DUA waiting for the medical form.
9. When the claimant's other daughter, in Florida, told the daughter in Massachusetts that she had already received her unemployment the [sic] benefits, the daughter in Massachusetts became concerned about the delay her mother was experiencing. She asked her nephew, the claimant's grandson, to try to reach someone at DUA to ask about the delay.
10. The claimant's grandson began calling DUA around May 6, 2020. He called approximately every other day. He would get a message that call volumes were high and would request a call back. He did not however manager [sic] to speak to someone at DUA until, on or about May 22, 2020. The staff person he spoke to at that time explained that the request for the medical form had been sent out in error and was not the cause for the delay. This person explained that the claimant was not receiving benefits because she had been disqualified. It was recommended that the claimant file an appeal of that determination if she was seeking unemployment benefits.

11. On May 22, 2020, the claimant's daughter filed an electronic appeal of Notice of Disqualification 0036 5515 38-01.
12. On May 29, 2020, DUA issued Notice of Disqualification 0043 3088 10-01, stating that under Section 39 of the law the claimant had not established that there was justification to consider her appeal timely and that a hearing on the merits of the case was therefore denied.

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 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, 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, 2020.¹ Effective May 4, 2020, the SJC implemented its Updated Order extending the tolling period through June 1, 2020.² The following month, the Court issued a Second Updated Order further extending the tolling period through June 30, 2020.³ 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 # 0036 5515 38 (the first Notice) was issued on April 21, 2020, during the period that the SJC suspended all statutory deadlines. The claimant filed her appeal on this issue on May 22, 2020, which was also within the statutory tolling period, so the claimant's appeal is deemed timely.

¹ See paragraph 12.

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

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

We, therefore, conclude as a matter of law that under G.L. c. 151A, § 39(b), the claimant did not file an untimely request in Issue ID # 0036 5515 38 because, at the time, 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, § 25(e)(1), in Issue ID # 0036 5515 38.



BOSTON, MASSACHUSETTS

Paul T. Fitzgerald, Esq.
Chairman

DATE OF DECISION - November 27, 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)**

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

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