

The claimant filed her hearing requests 24 and 30 days after each determination was issued. However, it was during the period that the Supreme Judicial Court tolled all statutory deadlines, and therefore was not untimely under G.L. c. 151A, § 39(b).

**Board of Review
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Issue ID: 0043 3288 07

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 28, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On April 28, 2020, the DUA mailed the claimant a Notice of Disqualification stating that she was not eligible for a dependency allowance under G.L. c. 151A, § 29(c), in DUA Issue ID # 0039 9156 07 (the first Notice). The claimant submitted a hearing request 24 days after this first Notice was issued. On May 22, 2020, the 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 # 0043 3288 07 (the second Notice). The claimant requested a hearing on this second notice 30 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 either the first or the second Notice pursuant to G.L. c. 151A, § 39(b), in a decision rendered on November 27, 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.

The issue before the Board is whether the review examiner's decision, which concluded that claimant did not have good cause for failing to file timely appeals of both the first and second Notices, 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. The claimant initiated a claim for unemployment insurance benefits effective for 04/26/2020.
2. When filing her claim, the claimant chose the option to have all correspondence from the Department of Unemployment Assistance (DUA) sent to her electronically.

3. The claimant received her correspondence from the DUA by viewing her UI Online inbox.
4. On 04/28/2020, DUA sent the claimant three Notices of Disqualification (Notice 1) that disqualified her from receiving a dependency allowances for her three children under Section 29(c) of the Law beginning 04/26/2020 and for an indefinite period of time. Notice 1 advised the claimant that the determination will become final unless she requested a hearing within ten calendar days after the date of mailing.
5. On an unknown date, shortly after it was issued, the claimant opened her UI Online inbox and reviewed the Notice 1. The claimant did not scroll past the first page on any of [sic] the Notice 1 to read the appeal instructions.
6. Between 04/28/2020 and 05/21/2020, the claimant logged in and viewed her UI Online inbox 16 times.
7. On or about 05/21/2020, the claimant called the DUA to ask why [sic] was not receiving the dependency allowances she applied for because her children were her children. During the conversation, a representative told the claimant she would resolve the issues for her.
8. The representative did not notify the claimant of her right to file an appeal.
9. On 05/22/2020 the claimant called the DUA again and spoke with a different representative. The representative notified the claimant of her right to file an appeal of each of the disqualifications and walked her through the appeal process.
10. On 05/22/2020, the claimant appealed Notice 1 on the 24th calendar day following the date on which Notice 1 was issued to her using the UI Online system.
11. On 05/30/2020, a Notice of Disqualification under Section 39(b) of the Law (Notice 2) was issued to the claimant's UI Online inbox.
12. Notice 2 notified the claimant that no good cause was found to consider the claimant's 05/22/2020 appeal timely.
13. On 06/03/2020, the DUA issued to the claimant's UI Online inbox two Notices of Disqualification under Section 39(b) of the Law notifying the claimant that no good cause was found to consider the claimant's other two 05/22/2020 appeals timely.
14. The claimant viewed and read Notice 2 shortly after it was issued to her UI Online inbox.

15. Between 05/30/2020 and 6/28/2020, the claimant viewed her UI Online inbox 30 times.
16. The claimant called the DUA on 06/29/2020 and asked a representative why she was not receiving the dependency allowances she applied for. The representative informed her that her late appeal was denied. The representative explained how to file her appeal.
17. The claimant did not file her appeal because she was confused [sic] the appeal process.
18. The claimant was not discouraged from filing an appeal by a DUA representative.
19. On 06/29/2020, the claimant filed a Request for Hearing for Notice 2 using the UI Online system, the 30th day after Notice 2 was issued.

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

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.

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 # 0039 9156 07 (the first Notice) was issued on April 28, 2020. The Notice of Disqualification in Issue ID # 0039 9830 70 (the second Notice) was issued on May 26, 2020. Both were issued during the period that the SJC suspended all statutory deadlines. Once the SJC's tolling period ended, the claimant's 10-day appeal period began. This means that the claimant had until July 10, 2020, to appeal both issues. Since she filed a hearing request for each issue before July 10, 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 # 0039 9156 07 (the first Notice) or Issue ID # 0043 3288 07 (the second Notice), because the Massachusetts Supreme Judicial Court had tolled the statutory 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(c), in Issue ID # 0039 9156 07.



BOSTON, MASSACHUSETTS

DATE OF DECISION - December 16, 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 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:

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.

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