

The claimant did not show good cause for an earlier claim effective date. When she was temporarily laid off due to COVID-19, she was too frustrated and depressed to read the employer's email communication or attend a Zoom meeting about how to apply for benefits, and she chose to file for PUA first. She has neither established compelling personal circumstances for the delay nor that she took reasonable action to clear up confusion about which unemployment program to apply for.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0043 9532 50

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny an earlier effective date in a claim for unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant separated from her position with the employer on March 18, 2020. She filed a claim for unemployment benefits with the DUA on May 4, 2020, seeking to pre-date her claim to March 18, 2020. Her request to pre-date the claim was denied in a determination issued on August 11, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied the request to pre-date the claim in a decision rendered on February 27, 2021. We accepted the claimant's application for review.

An earlier effective date was denied after the review examiner determined that the claimant did not have good cause for failing to file a timely claim for benefits, and, thus, she was not entitled to have her claim pre-dated to March 18, 2020, under G.L. c. 151A, §§ 23(b) and 24(c). 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 claimant's appeal.

The issue before the Board is whether the review examiner's conclusion, that the claimant did not show good cause to have her claim pre-dated to a March 15, 2020, effective date, 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 worked as a massage therapist for the employer from 10/10/17 to 3/18/20, when the employer closed temporarily due to the COVID-19 pandemic.

2. On 3/19/20, the General Manager at the claimant's location e-mailed all staff with information about how to file a regular unemployment insurance claim. The employer included frequently asked questions regarding how to file a claim.
3. The claimant was frustrated and depressed and did not read any e-mails from the General Manager after 3/18/20.
4. The General Manager participated in Zoom calls with employees on 3/27/20, 4/1/20, 4/3/20 and 4/10/20, and one topic that was discussed was unemployment insurance. She also checked in with employees on 3/31/20 and reminded them to request benefits each Sunday and to check in with her on a regular basis.
5. At some point, the claimant asked about how she could obtain her paystubs for unemployment, but the General Manager does not recall when the claimant made this request.
6. The claimant tried to file a PUA claim before she filed a regular unemployment claim but could not get through to file a claim.
7. The claimant filed a regular unemployment insurance claim herself, via UI Online, on 5/4/20, effective 5/3/20.
8. The General Manager helped the claimant with obtaining her paystubs. The claimant realized after filing her regular unemployment claim that DUA already had her wage information.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we also agree that the claimant did not establish good cause to have her claim predated to an earlier effective date.

G.L. c. 151A, § 25(a), provides, in relevant part, as follows:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for—(a) Any week in which he fails *without good cause* to comply with the registration and filing requirements of the commissioner. The commissioner shall furnish copies of such requirements to each employer, who shall notify his employees of the terms thereof when they become unemployed.

(Emphasis added.)

In order to open a claim for unemployment benefits, an individual must register with the DUA. G.L. c. 151A, § 24(c). For individuals in total unemployment, the effective date is the Sunday immediately preceding the date of registration. G.L. c. 151A, § 23(b).

Pursuant to its own regulations at 430 CMR 4.01(3) and (4), an earlier effect date may be granted for good cause. The DUA recognizes several reasons as good cause to pre-date a claim¹:

- The claimant could not file because of illness, death in the family, or other compelling personal reasons.
- The claimant did not receive written information from the employer on applying for benefits as required by [G.L. c. 151A] § 62A(g).
- The claimant presents credible information establishing that a DUA employee instructed the claimant not to apply earlier.
- The claimant found new full-time employment that began in the middle of a week (if requesting a predate to a week of partial unemployment).
- The claimant did not know how to file a claim, took reasonable action under the circumstances to find out how to apply, but did not acquire the knowledge within the first full week of unemployment.
- The claimant attempted to file a claim for benefits by phone or online, but was unsuccessful due to technical difficulties.
- The claimant had difficulty applying for benefits due to limited English proficiency.

If a claimant is allowed to have her claim pre-dated, she is deemed to have registered and filed during the week of the earlier effective date. *See* 430 CMR 4.01(3)(a).

In her decision, the review examiner denied the claimant's request for a pre-date after concluding that the claimant did not have good cause for failing to file her claim for unemployment benefits shortly after her March 18, 2020, temporary layoff from the employer. We agree.

The findings provide that in addition to the email communication about how to file a claim sent the following day, the employer had spoken with employees about filing for benefits in the first few weeks of the company's temporary shutdown. *See* Findings of Fact ## 1 and 2. Here, the employer was not obligated under G.L. c. 151A, § 62A(g), to provide written instructions to its employees about how to file for unemployment benefits, because this was a temporary shutdown, not a permanent separation.

¹ *See* DUA Adjudication Handbook, Chapter 2, pp 11–12.

It appears that the claimant did not read her email or participate in many of the Zoom meetings. The review examiner found that she was frustrated and depressed.² This may be, but the claimant has not presented substantial evidence establishing that her emotional condition was so debilitating that she could not apply for unemployment benefits. As such, we decline to conclude that the claimant has presented compelling personal reasons for the delay.

We also consider that, even though the claimant was eligible for regular unemployment benefits, she tried to file for Pandemic Unemployment Assistance (PUA) first. *See* Finding of Fact # 6. A claimant who does not know how to file a claim may have good cause for a pre-date, if, as listed above, she took reasonable action to find out how to apply.

We note that the public information available regarding the PUA program in late March, 2020, made it clear that it was generally for workers who traditionally did not qualify for regular unemployment benefits (*e.g.*, self-employed or gig workers), not for wage-earning employees such as the claimant. Even if the claimant was confused, she has not shown that she took reasonable action to learn about the difference. *See* Board of Review Decision 0048 2850 74 (May 28, 2020) (claimant who incorrectly applied for PUA based upon her own research did not have good cause to pre-date her subsequent regular unemployment claim).

We, therefore, conclude as a matter of law that the claimant did not establish good cause to place an earlier effective date on her claim pursuant to G.L. c. 151A, § 25(a).

² The claimant testified that at the time, it was COVID, she did not see anyone, she was isolated, frustrated, and depressed, and, even if she saw the emails, she would not have had a clue about what to apply for. She stated that she tried herself and could not deal. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

The review examiner's decision is affirmed. The claimant's effective date shall remain May 3, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 28, 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 apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**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 ordinarily thirty days from the mail date on the first page of this decision. If the thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the next business day 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.

SVL/AB/rh