

In light of the mandatory language under G.L. c. 151A, § 62A(g), the claimant is entitled to have her claim pre-dated by three months, because the employer provided her with a video message about how to seek unemployment benefits, rather than the required written notice.

**Board of Review
19 Staniford St.
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: 0046 2548 33

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 for an unemployment benefits claim. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her position with the employer on March 24, 2020. She filed a claim for unemployment benefits with the DUA on June 12, 2020, seeking to pre-date her claim to March 22, 2020. Her request to pre-date the claim was denied in a determination issued on June 20, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's initial determination and denied the request to pre-date the claim in a decision rendered on October 2, 2020. 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 22, 2020, under G.L. c. 151A, §§ 23(b) and 24(c). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. 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 decision, which concluded that the claimant is not entitled to have her claim pre-dated to a March 22, 2020 effective date, is supported by substantial and credible evidence and is free from error of law, where the findings show that the claimant's most recent employer did not provide her with written notice regarding how to file for unemployment benefits, as required under G.L. c. 151A, § 62A(g).

Findings of Fact

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

1. On a claim for benefits filed on 6/12/20, the claimant requested that her claim be predated to Sunday, 3/22/20. This would be also considered the week ending 3/28/20.
2. The request was denied and the effective date of the claim was established as Sunday, 6/7/20, in accordance with the provisions of Section 23(b) of the Law and 430 CMR 4.01.
3. The claimant was separated from her employer on 3/24/20, as she was laid off for lack of work. The claimant was a Coder for the instant employer.
4. At the time she was separated, the employer provided her with a video message containing information regarding unemployment. After receiving a call from her Supervisor that her job ended, the claimant never checked any of the messages the employer had sent.
5. In June, the claimant was asked by a friend if she was collecting unemployment. The claimant told her friend that she was not, because she believed she was not entitled to collect since she was part-time. The friend told the claimant she should contact her employer to see, because she believed the claimant could collect.
6. The claimant reached out to the employer and spoke to the Vice President of Operations. The VP of Operations told the claimant to apply.
7. The claimant was never discouraged to not file a claim.
8. The claimant was in total unemployment during the weeks beginning 3/22/20 through 6/6/20.
9. On 6/12/20, the claimant filed for unemployment insurance benefits. The claim was established as Sunday, 6/7/20.

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. 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, because the claimant's most recent employer failed to comply with the requirements of G.L. c. 151A, § 62A(g), we reject the review examiner's conclusion that the claimant is not entitled to have her claim pre-dated.

The legislature enacted G.L. c. 151A, § 62A(g) in order to ensure that workers are informed of the process for seeking unemployment benefits. It provides, in pertinent part, as follows:

Each employer shall issue to every separated employee, as soon as practicable, but not to exceed 30 days from the last day said employee performed compensable work, written information furnished or approved by said division which shall contain the name and mailing address of the employer, the identification number assigned to the employer by said division, instructions on how to file a claim for unemployment compensation, the address and telephone number of the regional office which serves the recipient, and the telephone number of the teleclaim information line. Delivery is made when an employer provides such information to an employee in person or by mail to the employee's last known address. The waiting period under section 23 for an employee who did not receive the information required by this paragraph and who failed to file timely for benefits, shall be the Sunday of the initial week such employee would have been eligible to receive unemployment compensation. Each employer shall have the burden of demonstrating compliance with the provisions required herein. (Emphasis added.)

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 separating from the employer. The review examiner arrived at this conclusion after finding that the claimant did not see the video about unemployment benefits that the employer sent to her at the time she was laid off, because she failed to check her messages. We disagree with the review examiner's conclusion, as the video sent by the employer to provide the claimant with information about unemployment benefits did not comply with the requirements of G.L. c. 151A, § 62A(g).

Pursuant to G.L. c. 151A, § 23(b) and 24(c), and 430 CMR 4.01(3) and 4.01(4), a claim effective date may be pre-dated under certain circumstances, if good cause for the delay in filing is established. The review examiner in this case decided that the claimant did not establish good cause. However, G.L. c. 151A, § 62A(g), mandates granting a pre-date if the claimant's former employer does not provide her with written information about how to file an unemployment claim. The Legislature placed the burden upon the employer to prove that it provided the required written notice under G.L. c. 151A, § 62A(g).

Because the review examiner found that the claimant's previous employer provided the claimant with a video message about how to file an unemployment claim, rather than the required *written* notice, the claimant is automatically entitled to have the effective date of her claim made retroactive to the Sunday of the initial week that she would have been eligible for unemployment compensation after she separated from the employer. Since the claimant separated from the employer on March 24, 2020, she is entitled to a pre-date to Sunday, March 22, 2020.

We, therefore, conclude as a matter of law that, pursuant to G.L. c. 151A, § 62A(g), the claimant is entitled to have the waiting period under G.L. c. 151A, § 23, be the Sunday of the initial week that the claimant would have been eligible for unemployment benefits.

The review examiner's decision is reversed. The claimant is entitled to have the effective date on her claim pre-dated to March 22, 2020.



BOSTON, MASSACHUSETTS

DATE OF DECISION - November 24, 2020

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 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/rh