

The claimant did not timely file a claim for regular unemployment because she believed her circumstances were covered by the PUA program. However, the claimant did not contact the DUA to verify her belief. Thus, the claimant has not established good cause to pre-date her claim. Employers need only provide written information under G.L. c. 151A, § 62A(g) for permanent separations.

**Board of Review
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Issue ID: 0048 2850 74

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

The claimant took a leave of absence from her position with the employer in February, 2020. She filed a claim for regular unemployment benefits with the DUA on July 6, 2020, seeking to pre-date her claim to March 15, 2020. Her request to pre-date the claim was denied in a determination issued on August 14, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only 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 December 26, 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 15, 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 remanded the case to the review examiner to obtain additional evidence pertaining to the claimant's delay in filing her claim for regular unemployment benefits. Both parties participated in the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

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 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 consolidated findings of fact are set forth below in their entirety:

1. On or about December 20, 2015, the claimant filed a claim for benefits with the Department of Unemployment Assistance (DUA).

2. On or about September 18, 2016, the claimant filed a claim for benefits with the DUA.
3. On or about February 15, 2020, the claimant began a leave of absence from her employment with the employer, initially due to a death in the family. The claimant's leave of absence was extended because of COVID-related reasons.
4. The employer did not provide the claimant with information on how to file for unemployment benefits.
5. The claimant was physically capable of filing a claim for benefits at any time.
6. The claimant was aware of unemployment assistance at all relevant times.
7. The employer last paid the claimant sometime in March 2020.
8. The claimant considered filing for the Pandemic Unemployment Assistance (PUA) sometime in mid-March 2020.
9. The claimant initially did not want to file a claim for regular unemployment benefits because she felt that, based on her "research", she should "qualify for PUA benefits" because her leave of absence was subsequently for COVID-related reasons.
10. The claimant never contacted the DUA for any assistance regarding eligibility.
11. Sometime in March 2020, the claimant filed for PUA benefits.
12. In late-May 2020, a PUA representative informed the claimant that she was not eligible for benefits but told the claimant to consider applying for regular unemployment benefits.
13. On July 6, 2020, the PUA [sic] sent the claimant a letter, informing her that she was not eligible for PUA benefits but should apply for regular unemployment benefits.
14. On July 6, 2020, the claimant filed a claim for unemployment benefits with the DUA.
15. The claimant has requested to the DUA that her effective open date for the claim be changed from July 5, 2020 to March 15, 2020.

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 consolidated 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 consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's legal conclusion that the claimant is not entitled to have her claim pre-dated to March 15, 2020, is supported by the substantial and credible evidence in the record.

In rendering our decision, we consider a number of statutory and regulatory provisions, as well as DUA policy applying those provisions. We start with G.L. c. 151A, § 25(a), which 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. . . .

G.L. c. 151A, § 24 further states:

[An individual, in order to be eligible for benefits under this chapter, shall] . . . (c) Have given notice of his unemployment, by registering either in a public employment office or in such other manner, and within such time or times, as the commissioner shall prescribe, and have given notice of the continuance of his unemployment and furnished information concerning any remuneration received by him during the period for which he claims benefits, in accordance with the procedures prescribed by the commissioner.

Generally, a claim's effective date begins on the Sunday preceding the date that the individual opens (or re-opens) a claim. G.L. c. 151A, § 23(b). This statutory provision also authorizes the DUA to pre-date a request for benefits, making the claim's effective date (or re-opening effective date) retroactive to a point in time before the week in which the claimant actually completes the steps necessary to meet the agency's registration and filing requirements. *See* G.L. c. 151A, § 23(b); 430 CMR 4.01(3) and (4). The DUA regulations make clear that such a pre-date will only be granted for good cause. 430 CMR 4.01(3) and (4)(b). Although the regulations do not define good cause, the DUA has written guidelines that delineate factors that constitute good cause. *See* DUA Adjudication Handbook, Chapter 2, § 2C.

In the instant case, the claimant is requesting a predate to March 15, 2020, a date during which she was on a leave of absence from the employer. The claimant had initially filed a claim for Pandemic Unemployment Assistance (PUA) benefits, before filing for regular unemployment benefits on July 6, 2020, after receiving a letter from the PUA program regarding her eligibility for regular benefits. After remand, the review examiner found that the claimant initially decided to file for PUA instead of regular benefits, because her research led her to believe that she qualified for PUA benefits, since her leave of absence was extended as a result of COVID-19.

Among the good cause reasons for pre-dating a claim listed in the Adjudication Handbook is not knowing how to file a claim but taking reasonable steps to find out how to apply. Here, the

claimant was not sure in March, 2020, whether she qualified for regular unemployment benefits or PUA. As stated above, after doing some research, the claimant believed she qualified for PUA benefits because her leave of absence was for COVID-19 related reasons. The claimant did not give the specifics of what her research consisted of, but she testified that she did not contact the DUA in March, 2020, to inquire about which program she should apply to at that time. Because the claimant failed to contact the DUA with her questions, we cannot conclude that she took reasonable steps to find out to which unemployment program she should apply. We further note that the public information available regarding the PUA program made it clear that it was generally for workers who traditionally did not qualify for regular unemployment benefits, such as those who are self-employed or independent contractors, and this was not the claimant's case. The latter further establishes that the claimant did not take reasonable steps to find out which unemployment program she should have applied to in March, 2020.

A claimant may also be granted a pre-date if the employer fails to comply with G.L. c. 151A, § 62A(g), which 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 . . . instructions on how to file a claim for unemployment compensation 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.)

Here, the employer did not provide the claimant with written information about how to file an unemployment claim in March, 2020. However, this does not entitle the claimant to a pre-date, as the employer is only required to provide information on filing a claim when there is a permanent separation from employment. The claimant here was only on a leave of absence in March, 2020. She did not establish that any other good cause reason prevented her from filing her regular unemployment claim in March, 2020.

We, therefore, conclude as a matter of law that pursuant to G.L. c. 151A, § 23(b), and 430 CMR 4.01(3), the claimant is not entitled to have her claim pre-dated for good cause.

The review examiner's decision is affirmed. The effective date of the claimant's claim is July 5, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 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/rh