

In light of the mandatory language under G.L. c. 151A, § 62A(g), the claimant is entitled to have his claim pre-dated by approximately two months, because the employer provided him with an email about how to seek unemployment benefits, which did not provide the claimant with all the information mandated by the statute.

**Board of Review
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Issue ID: 0048 8834 56

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 reverse.

The claimant separated from his position with the employer on March 7, 2020. He filed a claim for unemployment benefits with the DUA on May 18, 2020, seeking to pre-date his claim to March 22, 2020. His request to pre-date the claim was denied in a determination issued on August 28, 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 October 23, 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, he was not entitled to have his 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 took the case for review. 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 his 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 employer sent the claimant an email on how to file for unemployment benefits and, additionally, that communication did not contain all the necessary information 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 5/18/2020, the claimant requested that his claim be predated to Sunday, 3/22/2020. The request was denied and the effective date of the claim was established as Sunday 5/17/2020, in accordance with provisions of Section 23(b) of the Law and 430 CMR 4.01.
2. The claimant's last day of physical work was 3/7/2020. The facility where the claimant worked was shut down by the employer.
3. On 3/16/2020, the employer provided the claimant with written information about his right to file for unemployment benefits by email.
4. The claimant was busy with schoolwork and did not read the email sent by the employer.
5. Subsequently, the claimant spoke with a coworker who informed him that he could file for unemployment.
6. The claimant then went back and saw the email sent by the employer on 3/16/2020.
7. The claimant then filed his claim on 5/18/2020.

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 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 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 his 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 his 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 his claim for unemployment benefits shortly after separating from the employer. The review examiner arrived at this conclusion after finding that the claimant was busy with school, and, therefore, he did not read the email about unemployment benefits that the employer sent to him at the time he was laid off. We disagree with the review examiner's conclusion, as the email sent by the employer to provide the claimant with information about unemployment benefits did not comply with the express 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 deliver the notice about filing for benefits in person or by mail to the employee's last known address. A pre-date will also be granted if the notice does not provide employees with certain information about how to file a claim, such as the mailing address and identification number of the employer, the address and telephone number of the regional office which serves the employee, and the telephone number of the teleclaim information line. The Legislature placed the burden upon the employer to establish that it provided the required written notice under G.L. c. 151A, § 62A(g).

Because the information contained in the employer's email did not provide the claimant with all the information mandated by the statute, the employer has not met its burden. The employer's email only provides the unemployment division's website address, tells employees to indicate their claim is the result of COVID-19, and gives a contact person's email in case employees have any questions. Based on the above, the claimant is automatically entitled to have the effective date of his claim pre-dated, as requested.

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 pre-dated.

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

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 23, 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