

Since the claimant made several unsuccessful attempts to contact the agency online and by phone to file his claim, but was unable to contact a staff member due to unprecedented heavy call volume at the beginning of the COVID-19 pandemic, his claim is predated to the first week he initiated contact with the DUA.

**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: 0049 0100 32

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 of the claimant's claim. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed his claim on July 6, 2020, and requested an earlier effective date of his claim, which was denied in a determination issued on July 22, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant and his employer, the review examiner affirmed the agency's initial determination and denied the claimant's request to predate his claim in a decision rendered on February 11, 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 pursuant to G.L. c. 151A, § 23(b), and 430 CMR 4.01(3), and, thus, he was not entitled to have his claim pre-dated to June 21, 2020. 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 June 21, 2020, effective date, is supported by substantial and credible evidence and is free from error of law, where the claimant attempted to file his unemployment claim via telephone as soon as the employer temporarily shut down, but he could not get through due the extraordinary claim volume at the outset of the COVID-19 pandemic.

Findings of Fact

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

1. The claimant filed an unemployment insurance claim and obtained an effective date of his claim of 7/1/19. The benefit year end date of that claim is 6/30/19.
2. The claimant exhausted benefits on the above claim effective 1/4/20.

3. The claimant started working full-time for the instant employer on 1/27/20.
4. The instant employer shut down temporarily from 6/21/20 to 7/5/20.
5. The claimant returned to work, full-time, on 7/6/20.
6. The instant employer informed employees about the shut down before it occurred and informed employees of their right to file an unemployment insurance claim.
7. The claimant tried to file an unemployment insurance claim while the instant employer was temporarily shut down. He does not recall the dates he made these attempts to file his claim.
8. The claimant does not have a computer, so he tried to file his claim via telephone. When he called DUA to file his claim, the claim, in his words, 'kept getting rejected'.
9. The claimant received forty hours' pay during the week beginning 6/28/20 to 7/4/20.
10. The claimant successfully filed an unemployment insurance claim on 7/6/20, effective 7/5/20.

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 original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact except as follows. With reject Finding of Fact # 1 because it contains incorrect information about the claimant's previous claim. The DUA's UI Online record-keeping system shows that the claimant filed this claim on July 1, 2019, which resulted in an effective date of June 30, 2019, and a benefit year end date of June 27, 2020. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, we conclude that the claimant had good cause for failing to file his claim prior to July 6, 2020.

Since the claimant is requesting an earlier effective claim date, this case is governed by G.L. 151A, § 23(b), which states:

With respect to an individual in total unemployment who has registered or given notice as required by this section the waiting period shall commence on the Sunday immediately preceding the date of registration. With respect to an individual in partial unemployment, such waiting period shall commence on the Sunday next but one preceding such registration or notice; provided, that in the case of an individual

in partial unemployment the commissioner may prescribe an earlier Sunday on which such waiting period shall commence.

Also applicable is the statute's corresponding regulation, 430 CMR 4.01(3), which provides, in pertinent part, as follows:

The effective date of a claim for an individual in partial unemployment shall be the Sunday of the week immediately preceding the week in which such registration and filing occurred, provided the individual was in partial unemployment during such earlier week and such earlier week occurred after the expiration of any benefit year previously established for such individual; except that for good cause the Commissioner or his authorized agent may allow an earlier effective date.

During the week beginning June 21, 2020, the claimant searched for a way to contact the agency online to file a claim using his employer's computer, but he could not find a way to do so. During the week beginning June 28, 2020, he tried to contact the DUA by telephone to file his claim but was unable to contact a staff member.¹ His inability to reach the DUA by telephone presumably occurred due to the unprecedented heavy call volume brought about by the COVID-19 pandemic. The claimant was not able to speak with a DUA representative until July 6, 2020. He also explained that, during the layoff, he did not have a computer accessible to him, because he did not own one.² It is well recognized that, during the initial months of the COVID-19 pandemic, when businesses suddenly shut down, all state unemployment agencies, including the DUA, experienced significant workload increases and had to quickly implement several new unemployment benefit programs.³ In light of these extraordinary circumstances, the claimant's inability to contact the DUA for assistance with filing his claim at this time was beyond his control. We believe it constituted good cause for the delay in filing. *See* Board of Review Decision 0011 1287 67 (Nov. 3, 2014) (claimant had good cause to pre-date his claim, where he could not file earlier due to DUA's conversion to a new electronic record-keeping system).

We, therefore, conclude as a matter of law that the claimant is entitled to have his claim pre-dated, pursuant to G.L. c. 151A, § 23(b), and 430 CMR 4.01(3).

¹ While not explicitly incorporated into the review examiner's findings, this part of the claimant's testimony is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *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).

² *Id.*

³ *See* DUA Unemployment Insurance Policy and Performance Memo 2021.03 (Jan. 29, 2021), 3, p. 2; *see also* U.S. Department of Labor Unemployment Insurance Program Letter 20-21 (May 5, 2021), 4(d)(iii)(A), p. 8.

The review examiner's decision is reversed. The effective date of the claim is June 21, 2020.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 21, 2021



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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 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:
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.

JMO/rh