

Even with the Supreme Judicial Court’s Order temporarily tolling all statutory deadlines, the claimant’s hearing request is still untimely. The claimant filed it 12 days past the end of the SJC tolling period because she was looking for new employment. Board held this was not good cause for failing to file sooner.

**Board of Review
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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 the claimant’s request for a hearing under G.L. c. 151A, § 39(b). We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On June 8, 2020, the agency issued a determination that disqualified the claimant from receiving unemployment benefits under G.L. c. 151A, § 25(e)(1). The claimant appealed that determination to the DUA hearings department, but the hearings department did not receive her written request for a hearing until July 22, 2020, 44 days after the determination issued. Consequently, the hearings department issued a Notice of Disqualification on November 19, 2020, dismissing the claimant’s appeal as untimely. The claimant requested a hearing on the latter dismissal. Following a hearing on the merits of whether the claimant’s appeal of the June 8, 2020, determination was timely, the review examiner rendered a decision on December 10, 2020, affirming the dismissal under G.L. c. 151A, § 39(b). As a result of the review examiner’s decision, the claimant was not entitled to a hearing on the underlying disqualification. The Board accepted the claimant’s application for review.

The review examiner reached her decision after concluding that the claimant did not have justification for failing to timely appeal the June 8, 2020, determination pursuant to 430 CMR 4.15. 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 on appeal is whether the claimant’s request for hearing of the initial denial of benefits was timely, and, if it was not, whether the claimant had good cause for submitting a late appeal within the meaning of G.L. c 151A, § 39(b).

Findings of Fact

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

1. The claimant filed an initial claim for unemployment benefits effective May 17, 2020.

2. The claimant requested to receive correspondence electronically from the Department of Unemployment Assistance (the DUA).
3. On June 8, 2020, the DUA issued the claimant a Notice of Disqualification (the Notice), which informed her she was not entitled to benefits under Section 25(e)(1) of the Law. The Notice also notified the [sic] determination would become final if she did not request a hearing. It further instructed the claimant how to request a hearing on the determination and the deadline date to file such an appeal. The Notice stated, “This determination will become final unless: 1) You request a hearing within ten calendar days after the date of mailing, or 2) You request a hearing within eleven to thirty calendar days after the date of mailing and it is established that such delay was for good cause. In limited circumstances, you may request a hearing after thirty calendar days.”
4. On or about June 8, 2020, the claimant received notification of the Notice of Disqualification via her email. The claimant read the Notice upon receipt of it.
5. The claimant did not request a hearing on the Notice because she looked for new employment.
6. Because the claimant was not able to find new employment, she electronically filed an appeal request on July 22, 2020, at 12:51 p.m.
7. On November 19, 2020, the DUA issued the claimant a Notice of Disqualification under Section 39(b) of the Law on her late appeal request.
8. On November 19, 2020, at 8:24 a.m., the claimant electronically requested an appeal on the Notice of Disqualification under Section 39(b) of the Law.

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. After such review, the Board adopts the review examiner’s findings of fact except to note as follows. In light of Finding of Fact # 6, we believe the review examiner intended Finding of Fact # 5 to state that the claimant did not request a hearing on the notice at the time she received it. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, which are discussed below.

Ordinarily, as stated in the review examiner’s decision, a claimant is required to file a request for a hearing within the statutory deadline set forth under G.L. c. 151A, § 39(b), which provides, in pertinent part, as follows:

Any interested party notified of a determination may request a hearing within ten days after delivery in hand by the commissioner’s authorized representative, or

mailing of said notice, unless it is determined . . . that the party had good cause for failing to request a hearing within such time. In no event shall good cause be considered if the party fails to request a hearing within thirty days after such delivery or mailing of said notice. . . .

The review examiner's decision is also based upon the DUA regulations that were promulgated to interpret the above statutory provision. Specifically, 430 CMR 4.14 and 430 CMR 4.15, provide as follows:

430 CMR 4.14. Good Cause for a Late Appeal.

The Commissioner may extend the ten day filing period where a party establishes to the satisfaction of the Commissioner or authorized representative that circumstances beyond his or her control prevented the filing of a request for a hearing within the prescribed ten day filing period. Examples of good cause for a failure to file a timely request for a hearing include, but are not limited to, the following:

- (1) A delay by the United States Postal Service in delivering the Commissioner's determination;
- (2) Death of a household member or an immediate family member (including a spouse, child, parent, brother, sister, grandparent, stepchild or parent of a spouse);
- (3) A documented serious illness or hospitalization of a party household member or an immediate family member during the entire ten-day filing period or a portion of the appeal period if the party's ability to timely appeal is thereby affected;
- (4) An emergency family crisis which requires a party's immediate attention during the entire ten-day filing period or a portion of the appeal period if the party's ability to timely appeal is thereby affected;
- (5) An inability to effectively communicate or comprehend English and the party is unable to find a suitable translator to explain the notice of determination within the ten-day filing period;
- (6) The Commissioner's determination is not received and the party promptly files a request for a hearing after he or she knows or should have known that a determination was issued;
- (7) A continuing absence from the Commonwealth, while seeking employment, during all or most of the ten-day filing period;
- (8) Intimidation, coercion or harassment by an employer resulting in a party failing to timely request a hearing;
- (9) A Division employee directly discourages a party from timely requesting a hearing and such discouragement results in a party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing;
- (10) An inability because of illiteracy or a psychological disability to understand that a request for a hearing must be filed within the ten-day filing period;
- (11) The individual's need to address the physical, psychological and legal effects of domestic violence as defined in M.G.L. c. 151A, § 1(g $\frac{1}{2}$);
- (12) Any other circumstances beyond a party's control which prevented the filing of a timely appeal.

430 CMR 4.15. Late Appeals Filed Beyond 30 Days.

The 30-day limitation on filing a request for a hearing shall not apply where the party establishes that:

- (1) A Division employee directly discouraged the party from timely requesting a hearing and such discouragement results in the party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing;
- (2) The Commissioner's determination is received by the party beyond the 30-day extended filing period and the party promptly files a request for hearing;
- (3) The Commissioner's determination is not received and the party promptly files a request for a hearing after he or she knows that a determination was issued;
- (4) An employer threatened, intimidated or harassed the party or a witness for the party, which resulted in the party's failure to file for a timely hearing.

Because the determination issued on June 8, 2020, we must also consider temporary modifications to the unemployment law brought about by the COVID-19 pandemic.

On April 6, 2020, the Massachusetts Supreme Judicial Court (SJC) issued an Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic, which tolled all deadlines set forth in statutes from March 17, 2020, through May 3, 2020.¹ Effective May 4, 2020, the SJC implemented its Updated Order extending the tolling period through June 1, 2020.² The following month, the Court issued a Second Updated Order further extending the tolling period through June 30, 2020.³ These Orders had the effect of tolling all statutory appeal deadlines from March 17, 2020, through June 30, 2020.

The review examiner's decision is based upon the conclusion that the claimant's search for other employment did not amount to justification for failing to timely appeal the June 8, 2020, determination after 30 days pursuant to 430 CMR 4.15. Therefore, the review examiner affirmed the dismissal under G.L. c. 151A, § 39(b). However, under the SJC's Order in effect at the time, the claimant's 10-day appeal period began on July 1, 2020, and ended on July 10, 2020. Because she filed her hearing request on July 22, 2020, it was only 12 days late.

Because the appeal was 12 days late, we must consider whether the claimant has established good cause pursuant to 430 CMR 4.14.

Findings of Fact ## 5 and 6 establish that the claimant filed her late appeal because she was busy searching for new employment. However, none of the enumerated examples cited in 430 CMR 4.14(1)–(11) apply to the facts of this case, and there is no evidence that there were circumstances beyond the claimant's control, which prevented the filing of a timely appeal for 430 CMR 4.14(12) to apply. Searching for work is an important requirement for on-going eligibility for

¹ See paragraph 12.

² See Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic, effective May 4, 2020, paragraph 12.

³ See Second Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic, effective June 1, 2020, paragraph 13.

unemployment benefits. *See* G.L. c. 151A, § 24(b). Unfortunately, this does not constitute good cause for a late appeal under 430 CMR 4.14.

We, therefore, conclude as a matter of law that the claimant did not file a timely request for a hearing as required under G.L. c. 151A, § 39(b), even in light of the SJC's Order tolling the 10-day appeal deadline.

The review examiner's decision is affirmed. The claimant is not entitled to a hearing on the merits of her underlying disqualification under G.L. c. 151A, § 25(e)(1).



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 26, 2021



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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 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