

Pursuant to G.L. c. 151A, § 71, the DUA did not have authority to redetermine the claimant's eligibility for benefits under G.L. c. 151A, § 25(e). This is because the DUA's Notice of Disqualification, issued more than a year after the claimant's first benefit payment, was time-barred under § 71.

**Board of Review
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Issue ID: 0054 3425 25

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 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 or about April 18, 2020. He reopened his 2019-01 claim for unemployment benefits with the DUA and was initially awarded benefits. On July 17, 2021, the DUA issued a Notice of Disqualification. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on January 14, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reason and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). 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.

Ruling of the Board

We need not decide whether the review examiner's decision to disqualify the claimant under G.L. c. 151A, § 25(e), was correct, because the Notice of Disqualification issued by the DUA on July 17, 2021, was time-barred by the provisions of G.L. c. 151A, § 71.

The unemployment statute imposes time limits on the DUA's authority to redetermine eligibility for benefits. G.L. c. 151A, § 71, provides, in relevant part, as follows:

The commissioner may reconsider a determination whenever he finds that (1) an error has occurred in connection therewith; or (2) wages of the claimant pertinent to such determination but not considered in connection therewith have been newly discovered; or (3) benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentation of fact; provided, however, that with respect

to (1) and (2) *no such redetermination shall be made after one year from the date of the original determination*; and provided, further, that with respect to (3) no such redetermination shall be made after four years from the date of the original determination

The decision of the commissioner not to reconsider a decision shall be final and not subject to appeal under any provision of this chapter.

(Emphasis added.)

The DUA is prohibited from paying benefits without first determining that the claim is valid, including that the claimant separated for qualifying reasons. *See* G.L. c. 151A, §§ 25(e) and 39(a). In this case, the claimant was initially awarded benefits following this separation from employment. The DUA's electronic database, UI Online, shows that the DUA issued its first payment to the claimant on April 30, 2020. By issuing that payment, the DUA is deemed to have determined that the claimant's separation from the employer was qualifying under G.L. c. 151A, § 25(e).

This means that the Notice of Disqualification issued on July 17, 2021, was actually a redetermination. Since nothing in the record or in the DUA's electronic record-keeping system, UI Online, indicates that the benefits paid to the claimant were based upon a misrepresentation of fact, the DUA had one year within which it could redetermine his eligibility for benefits. Here, the DUA's Notice was issued more than a year later. Pursuant to G.L. c. 151A, § 71, the agency did not have authority to do so.

We, therefore, conclude as a matter of law that the claimant may not be disqualified pursuant to G.L. c. 151A, § 25(e), because, pursuant to G.L. c. 151A, § 71, the DUA did not have the authority to issue the July 17, 2021, redetermination of its initial award of benefits.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week of April 19, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 21, 2023



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

**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.

LSW/rh