Pursuant to G.L. c. 151A, § 71, the employer had no standing to file an appeal of the DUA's Notice of Approval to pay benefits under G.L. c. 151A, § 25(e). This is because the DUA's Notice, issued more than a year after the claimant's first benefit payment, was time-barred under § 71. By not redetermining the claimant's eligibility within one year, the DUA had effectively decided not to reconsider the award of benefits. Its decision was final and not subject to appeal.

Board of Review
100 Cambridge Street, Suite 400
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: 0054 5877 96

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 her position with the employer on February 28, 2020. She filed a claim for unemployment benefits with the DUA, effective March 29, 2020, which was approved in a determination issued on August 31, 2021. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on February 9, 2023. 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 reasons and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, as well as DUA's electronic record keeping system, UI Online.

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 employer was improperly given appeal rights pursuant to 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 her separation from employment. The DUA's electronic database, UI Online, shows that the DUA issued its first payment to the claimant on April 14, 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 DUA's August 31, 2021, Notice was actually a redetermination. Since nothing in the record or in the DUA's electronic record-keeping system, UI Online, indicates that those benefits were paid based upon a misrepresentation of fact, the DUA had one year within which it could redetermine her 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.

The DUA's failure to take any action to redetermine the claimant's initial award of benefits within one year was effectively a decision not to reconsider her eligibility under G.L. c. 151A, § 25(e). As stated in G.L. c. 151A, § 71, above, DUA's decision not to reconsider is final and not subject to appeal. Accordingly, the employer was improperly allowed to file an appeal.

Where the claimant's separation was found to be involuntary, for urgent, compelling, and necessitous reasons, the employer's charges for the claimant's benefits should be charged to the solvency account, provided that the employer is contributory and has met the requirements of G.L. c. 151A, § 14(d)(3).

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 employer had no standing to file an appeal.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending February 29, 2020, and for subsequent weeks, if otherwise eligible.

Charlene A. Stawicki

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 28, 2024

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.

DY/rh