

**The claimant had justification for his late appeal, as the DUA did not send him notice to check his UI Online account for a determination.**

**Board of Review  
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Member  
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Member**

**Issue ID: 0055 8011 26**

### 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 late request for a hearing. The claimant's request for a hearing was denied on the ground that the claimant failed to establish justification for filing his appeal past the ten-day deadline pursuant to G.L. c. 151A, § 39(b). We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with an effective date of September 22, 2019. On October 20, 2020, the DUA issued a notice of disqualification under G.L. c. 151A, § 39, denying the claimant's late request for a hearing. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination in a decision rendered on December 11, 2020. We accepted the claimant's application for review.

The claimant's request for a hearing was denied after the review examiner determined that, pursuant to G.L. c. 151A, § 39(b), the claimant did not have justification for filing his appeal past the ten-day deadline. 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 did not have justification for filing his appeal past the ten-day deadline, is supported by substantial and credible evidence and is free from error of law, where the review examiner found that the claimant did not receive emails from the agency instructing him to check his UI Online account.

### Findings of Fact

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

1. The claimant filed a claim for unemployment insurance benefits effective 09/22/2019.

2. The claimant elected to receive correspondence electronically. The claimant did not receive emails to check his UI Online account.
3. While unemployed, the claimant regularly checked his UI Online inbox.
4. The claimant returned to work on 07/27/2020 and stopped checking his UI Online inbox because of his return to work.
5. On 07/29/2020, the DUA electronically issued the claimant a Notice of Disqualification (notice) to his UI Online inbox.
6. The notice informed the claimant that he was disqualified from the receipt of unemployment benefits pursuant to Section 25(c) of the Law.
7. The notice included instructions on how to file an appeal and the time parameters within which to do so. The notice included an appeal request information form to mail in to file an appeal.
8. An appeal of the notice was due by 08/10/2020.
9. The claimant's employment ended in October 2020. The claimant filed a new unemployment claim and resumed checking his UI Online inbox.
10. In October 2020, the claimant viewed the notice in his UI Online inbox.
11. The claimant appealed the notice electronically on 10/16/2020.
12. 10/16/2020 was the 79<sup>th</sup> calendar day following 07/29/2020.

### 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 and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant did not have justification for failing to timely file his appeal, as she found that the claimant did not receive email notifications to check his UI Online account.

G.L. c. 151A, § 39(b), 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. . . .

Pursuant to G.L. c. 151A, 39(b), the claimant had ten days to appeal the July 29, 2020, notice of disqualification. Since the claimant did not file the appeal until several months after the issuance of the underlying determination, the standard is whether there is justification for considering the appeal to be timely, rather than whether there is good cause for the late appeal. *Compare* 430 CMR 4.14 (allowing hearing on late appeal if appeal is filed within thirty days of issuance of determination and good cause is shown) with 430 CMR 4.15 (allowing hearing on late appeal if appeal filed after thirty days and justification shown). 430 CMR 4.15 provides:

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.

The review examiner found that the claimant did not receive an email from the DUA to his personal email account notifying the claimant that he had important documents in his UI Online Inbox, which required review. The right to receive notice and an opportunity to be heard is a fundamental right. The Due Process Clause of the Fourteenth Amendment prohibits the States from depriving any person of property without providing notice and an opportunity to be heard. Dusenbery v. United States, 534 U.S. 161, 167 (2002). Specifically, it requires “notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (further citations omitted). Since the claimant did not receive a DUA communication to look for the notice of disqualification, we believe that he did not receive the requisite notice necessary to timely appeal.

We, therefore, conclude as a matter of law that the claimant established justification for filing his appeal beyond the statutory appeal period pursuant to G.L. c. 151A, 39(b), and 430 CMR 4.15.

The review examiner’s decision is reversed. The claimant is entitled to a hearing on the merits of Issue ID # 0048 4277 62.



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 29, 2021**



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](http://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