

Pursuant to G.L. c. 151A, § 71, the employer did not have standing to appeal DUA’s determination of eligibility under G.L. c. 151A, § 25(e). The DUA’s payment of benefits following this separation is deemed to have been a determination of eligibility. Thus, its Notice of Approval, issued more than a year after this benefit payment, was actually a redetermination, and it 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.

**Board of Review
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Issue ID: 0058 5718 43

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 August 12, 2020. He reopened his 2019-01 claim for unemployment benefits with the DUA as of the week beginning August 9, 2020, and was initially awarded benefits. On September 30, 2021, the DUA issued a Notice of Approval in connection with that separation. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner reversed the agency’s initial determination and denied benefits in a decision rendered on February 11, 2023. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant was discharged for deliberate misconduct in wilful disregard of the employing unit’s interest and, thus, was disqualified under G.L. c. 151A, § 25(e)(2). 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 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 his separation from employment. The DUA's electronic database, UI Online, shows that, after reopening his claim, the DUA issued its first payment to the claimant on August 28, 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 Approval issued on September 30, 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.

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 his 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.

We, therefore, conclude as a matter of law that the claimant may not be disqualified pursuant to G.L. c. 151A, § 28A, 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 of August 9, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 21, 2023



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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