

Pursuant to G.L. c. 151A, § 71, the DUA’s redetermination was time-barred, as it was issued more than a year after the claimant’s notice of approval. 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
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: 0060 2610 24

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 filed a claim for unemployment benefits with the DUA, effective December 13, 2020. On January 29, 2021, the DUA issued a Notice of Approval under G.L. c. 151A, § 24(b). Thereafter, on October 26, 2022, the DUA issued a Redetermination, Notice of Disqualification (Notice). The claimant appealed to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency’s Notice and denied benefits in a decision rendered on January 13, 2023. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant did not establish that he was legally available to work in the United States and, thus, was disqualified under G.L. c. 151A, § 24(b). 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, § 24(b), was correct, because the DUA improperly issued a redetermination in this matter 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.)

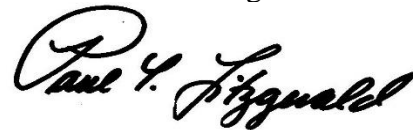
The DUA is prohibited from paying benefits without first determining that the claim is valid, including that the claimant is legally available to work. *See* G.L. c. 151A, §§ 24(b) and 39(a). In this case, the claimant was initially awarded benefits following the establishment of his 2020-01 claim in a determination issued on January 29, 2021. That initial determination was subsequently reversed and benefits denied in a redetermination issued on October 26, 2022. Since nothing in the record or in the DUA's electronic record-keeping system, UI Online, indicates that the benefits initially 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, § 24(b). As stated in G.L. c. 151A, § 71, above, the DUA's decision not to reconsider is final and not subject to appeal. Accordingly, the DUA improperly issued its redetermination.

We, therefore, conclude as a matter of law that the claimant may not be disqualified pursuant to G.L. c. 151A, § 24(b), because, pursuant to G.L. c. 151A, § 71, the agency was time-barred from issuing a redetermination.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning December 13, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 8, 2023



Paul T. Fitzgerald, Esq.
Chairman



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.

SVL/rh