

In light of the mandatory language under G.L. c. 151A, § 62A(g), the claimant is entitled to have his claim pre-dated, because the employer merely provided him with a link to an unemployment benefits website, rather than the required written notice including such information as the employer's identification number and the address and telephone number of the DUA's regional office.

**Board of Review
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Issue ID: 0062 9607 97

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 an earlier effective date on a claim for 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 July 9, 2020. He filed a claim for unemployment benefits with the DUA, effective on December 27, 2020, seeking to pre-date his claim to July 9, 2020. His request to pre-date the claim was denied in a determination issued on February 9, 2021. 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 and denied the request to pre-date the claim in a decision rendered on November 19, 2021. We accepted the claimant's application for review.

An earlier effective date was denied after the review examiner determined that the claimant did not have good cause for failing to file a timely claim for benefits, and, thus, he was not entitled to have his claim pre-dated to July 9, 2020, under G.L. c. 151A, §§ 23(b) and 24(c). 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 is not entitled to have his claim pre-dated to a July 9, 2020, effective date, is supported by substantial and credible evidence and is free from error of law, where the findings show that the claimant's most recent employer did not provide him with the necessary written notice regarding how to file for unemployment benefits, as required under G.L. c. 151A, § 62A(g).

Findings of Fact

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

1. The claimant filed an initial claim for unemployment insurance benefits, effective 12/27/20. Prior to filing the claim, the claimant worked full-time for

an information management business. The claimant was laid off from his position on 7/9/20.

2. On 7/9/20, the claimant's last employer provided the claimant a separation agreement and release that provided for the claimant to continue receiving his regular pay for a period of 25 weeks and a lump sum payment of \$120,821.76. The claimant was required to sign the release in order to receive these payments.
3. The separation agreement also contained a section that addressed unemployment compensation. This section reads: "Eligibility for state unemployment compensation benefits is determined by applicable state law. **For information on filing for unemployment benefits, please visit this website** <https://www.careeronestop.org/LocalHelp/UnemploymentBenefits>. **From here you can find your state's unemployment office website.**" The claimant did not attempt to open the link contained in the unemployment compensation section of the separation agreement because he thought that he could not collect unemployment benefits while also receiving pay from the employer.
4. The claimant did not contact the DUA to discuss his receipt of separation pay. The claimant did not discuss unemployment insurance benefits with the employer.
5. The claimant has not filed an unemployment claim prior to the claim filed with an effective date of 12/27/20.
6. After filing his initial claim, the claimant received a notice of approval from the DUA, informing him that he was not subject to disqualification based upon the receipt of the additional payments from the employer. After receiving this notice, the claimant contacted the DUA and requested that his claim be filed with an earlier effective date.
7. On 1/28/21, the claimant completed a DUA fact-finding questionnaire, indicating that he did not file his claim.

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, because the claimant's most recent employer failed to comply with the requirements of G.L. c. 151A, § 62A(g), we reject the review examiner's conclusion that the claimant is not entitled to have his claim pre-dated.

The legislature enacted G.L. c. 151A, § 62A(g) in order to ensure that workers are informed of the process for seeking unemployment benefits. It provides, in pertinent part, as follows:

Each employer shall issue to every separated employee, as soon as practicable, but not to exceed 30 days from the last day said employee performed compensable work, written information furnished or approved by said division which shall contain the name and mailing address of the employer, the identification number assigned to the employer by said division, instructions on how to file a claim for unemployment compensation, the address and telephone number of the regional office which serves the recipient, and the telephone number of the teleclaim information line. Delivery is made when an employer provides such information to an employee in person or by mail to the employee's last known address. The waiting period under section 23 for an employee who did not receive the information required by this paragraph and who failed to file timely for benefits, shall be the Sunday of the initial week such employee would have been eligible to receive unemployment compensation. Each employer shall have the burden of demonstrating compliance with the provisions required herein. (Emphasis added.)

In her decision, the review examiner denied the claimant's request for a pre-date after concluding that the claimant did not have good cause for failing to file his claim for unemployment benefits shortly after separating from the employer. The review examiner arrived at this conclusion after finding that the claimant did not use the link to a website regarding unemployment benefits, which the employer included in the claimant's separation agreement, and he did not contact the DUA or the employer to discuss his circumstances. *See Findings of Fact ## 3-4.* We disagree with the review examiner's conclusion, as the link provided by the employer did not comply with the requirements of G.L. c. 151A, § 62A(g).

Because the claimant's previous employer provided the claimant with a link that would merely direct the claimant to his state's unemployment website, rather than the required written notice, which must include information such as the employer's identification number and the address and telephone number of the regional office which serves the claimant, he is automatically entitled to have the effective date of his claim made retroactive to the Sunday of the initial week that he would have been eligible for unemployment compensation after he separated from the employer. *See Finding of Fact # 3.* Since the claimant separated from the employer on July 9, 2020, he is entitled to a pre-date to Sunday, July 5, 2020.

We, therefore, conclude as a matter of law that, pursuant to G.L. c. 151A, § 62A(g), the claimant is entitled to have the waiting period under G.L. c. 151A, § 23, be the Sunday of the initial week that the claimant would have been eligible for unemployment benefits.

The review examiner's decision is reversed. The claimant is entitled to have the effective date on his claim pre-dated to July 5, 2020.



Paul T. Fitzgerald, Esq.

BOSTON, MASSACHUSETTS

DATE OF DECISION - February 24, 2022

Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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 ordinarily thirty days from the mail date on the first page of this decision. If the thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the next business day 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