

In light of the mandatory language under G.L. c. 151A, § 62A(g), the claimant is entitled to have his claim pre-dated by a week, because the employer did not provide him with the required written notice about how to file for unemployment benefits.

**Board of Review
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Issue ID: 0063 3320 10

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 for 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 January 25, 2021. He filed a claim for unemployment benefits with the DUA on February 2, 2021, seeking to pre-date his claim to January 24, 2021. His request to pre-date the claim was denied in a determination issued on February 4, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only 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 June 5, 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 January 24, 2021, under G.L. c. 151A, §§ 23(b) and 24(c). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. Our decision is based upon our review of the entire record.

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 January 24, 2021 effective date, is supported by substantial and credible evidence and is free from error of law, where the record before us shows that the claimant's most recent employer did not provide him with 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 worked for the instant employer from 4/9/12 to 1/25/21 when he was laid off.

2. On 1/25/21, the claimant's supervisor said, "You know, you can file an unemployment insurance claim?"
3. The claimant told his supervisor he was aware he could file an unemployment insurance claim.
4. The employer did not give the claimant information in writing that specified when he had to file an unemployment insurance claim.
5. The claimant assumed he had to wait a week to file an unemployment insurance claim after separating from employment. No DUA employee told him he had to wait to file a claim.
6. On 2/2/21, the claimant called DUA and a DUA employee filed a claim on his behalf, effective 1/31/21.

Ruling of the Board

In accordance with our statutory obligation, we review 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. After 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 immediately after separating from the employer. The review examiner arrived at this conclusion after finding that the claimant waited to file for benefits, because he assumed he had to wait a week after separating from the employer before filing. *See* Finding of Fact # 5. We disagree with the review examiner's conclusion, as the findings establish that the employer did not deliver to the claimant written instructions on how to file an unemployment claim, as required under G.L. c. 151A, § 62A(g). *See* Finding of Fact # 4.

Pursuant to G.L. c. 151A, § 23(b) and 24(c), and 430 CMR 4.01(3) and 4.01(4), a claim effective date may be pre-dated under certain circumstances, if good cause for the delay in filing is established. The review examiner in this case decided that the claimant did not establish good cause. However, G.L. c. 151A, § 62A(g), mandates granting a pre-date if the claimant's former employer does not provide him with written information about how to file an unemployment claim. The Legislature placed the burden upon the employer to prove that it provided the required written notice under G.L. c. 151A, § 62A(g).

Because the employer did not provide to the claimant the required written notice, the claimant 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. Since the claimant separated from the employer on January 25, 2021, he is entitled to a pre-date to Sunday, January 24, 2021.

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 January 24, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 27, 2021



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**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