

Where the claimant had an open unemployment claim pending in New York when she separated from her Massachusetts employer, she reasonably applied for benefits there before turning to Massachusetts. Board allowed her to pre-date her Massachusetts claim for good cause pursuant to G.L. c. 151A, § 25(a).

**Board of Review
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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 in a claim for unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her Massachusetts employer on January 1, 2021. She filed a claim for unemployment benefits with the DUA on February 3, 2021, seeking to pre-date her claim to January 3, 2021. Her request to pre-date the claim was denied in a determination issued on February 25, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant,¹ the review examiner affirmed the agency's initial determination and denied the request to pre-date the claim in a decision rendered on July 21, 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, she was not entitled to have her claim pre-dated under G.L. c. 151A, §§ 23(b) and 24(c), and 430 CMR 4.01(3). 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's efforts to re-open an existing unemployment claim in New York did not constitute good cause for her delay in filing a claim in Massachusetts, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant had worked as a full-time Guest Relations Coordinator for the employer who was located in [Town A], Massachusetts. The claimant last

¹ The claimant's former employer was invited to participate in the hearing as a witness only, but it did not attend.

- worked there on January 1, 2021. The employer's business had closed at that time.
2. The claimant had not seen any postings on the employer work premises about Unemployment Insurance.
 3. Upon separating from employment, the claimant was provided with written information about filing for unemployment insurance in the state of Massachusetts. That information was written in English, which is the claimant's primary language.
 4. The claimant had worked for the Department of Labor in New York in April 2020. The claimant had quit that position, filing a claim for unemployment benefits with the State of New York in May of 2020. Thereafter the claimant had additional New York wages from another employer that she worked after that date.
 5. The claimant did not contact the Department of Unemployment Assistance (DUA) in Massachusetts when she separated from employment with the Massachusetts employer. The claimant decided to contact the State of New York because she had an open claim in New York, and she believed it would be "illegal" to file a claim in both states.
 6. The claimant reached out to the New York unemployment department on January 4, 2021. The claimant was instructed that she would have to submit her wages with the Massachusetts employer and prove she worked.
 7. After the claimant made numerous calls to the New York unemployment department, on February 3, 2021, the claimant was informed by the representative that she would be "better off filing her claim with Massachusetts" and that they would "close out" her New York claim.
 8. The claimant filed her claim for unemployment benefits with the state [sic] of Massachusetts on February 3, 2021. The effective date of the claim is January 31, 2021.
 9. The claimant requested a predate of her claim for unemployment benefits.
 10. On February 25, 2021, a Notice of Disqualification was issued under Section 23(b) of the Law, indicating, "After consideration of the facts submitted, it has been determined that your reason for not contacting this office to file your claim earlier does not constitute good cause. You failed to contact this office prior to the week of 1/31 to open a claim for week of 1/3. Your employer provided you with written information on how to timely file a MA claim. Included in that information is that a claimant should file a new claim upon the week he/she becomes unemployed. As you were given this information, as a result your predate request is denied." "A waiting period may not be served nor benefits

paid on this claim for any week prior to 1/31/2021.” The claimant filed an appeal to that determination.

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 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 disagree with the review examiner’s legal conclusion that the claimant is not entitled to pre-date her claim.

In determining the claimant’s eligibility for a predate, we look to G.L. c. 151A, § 25(a), which provides, in relevant part, as follows:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for—(a) Any week in which he fails *without good cause* to comply with the registration and filing requirements of the commissioner. The commissioner shall furnish copies of such requirements to each employer, who shall notify his employees of the terms thereof when they become unemployed.

(Emphasis added.)

In order to open a claim for unemployment benefits, an individual must register with the DUA. G.L. c. 151A, § 24(c). For individuals in total unemployment, the effective date is the Sunday immediately preceding the date of registration. G.L. c. 151A, § 23(b).

Pursuant to the DUA’s own regulations at 430 CMR 4.01(3) and (4), an earlier effective date may be granted for good cause. The DUA recognizes several reasons as good cause to pre-date a claim:²

- The claimant could not file because of illness, death in the family, or other compelling personal reasons.
- The claimant did not receive written information from the employer on applying for benefits as required by [G.L. c. 151A] § 62A(g).
- The claimant presents credible information establishing that a DUA employee instructed the claimant not to apply earlier.
- The claimant found new full-time employment that began in the middle of a week (if requesting a predate to a week of partial unemployment).
- The claimant did not know how to file a claim, took reasonable action under the circumstances to find out how to apply, but did not acquire the knowledge within the first full week of unemployment.

² See DUA Adjudication Handbook, Chapter 2, pp. 11–12.

- The claimant attempted to file a claim for benefits by phone or online, but was unsuccessful due to technical difficulties.
- The claimant had difficulty applying for benefits due to limited English proficiency.

If a claimant is allowed to have her claim pre-dated, she is deemed to have registered and filed during the week of the earlier effective date. *See* 430 CMR 4.01(3)(a).

In this case, it is apparent that the claimant knew she should file her unemployment claim right after she separated from her last employer, but she turned to the New York State unemployment agency instead of the Massachusetts DUA. Findings of Fact ## 1 and 6 provide that she separated from her Massachusetts employer on January 1, 2021 (a Friday), and contacted the New York agency on January 4, 2021 (the following Monday). She did not seek to open a Massachusetts claim until a month later on February 3, 2021. *See* Finding of Fact # 8. The question we must decide is whether her reason for waiting to file in Massachusetts constitutes good cause to pre-date her claim prior to the Sunday before she actually filed. We think that it does.

As noted above, one of the reasons that the DUA considers to be good cause for allowing a claimant to pre-date her claim to an earlier effective date is that a claimant did not know how to file a claim, took reasonable action under the circumstances to find out how, but did not acquire that knowledge within the first full week of unemployment. Here, the findings show that the claimant had worked for employers in New York State during the prior year and had an open claim for benefits in New York at the time she separated from her Massachusetts employer. *See* Findings of Fact ## 4 and 5. The claimant is correct that she is not permitted to collect unemployment benefits from more than one state. *See* Finding of Fact # 5; *see also* G.L. c. 151A, § 26, and 430 CMR 4.05(3)(a). For this reason, it makes perfect sense to find out if she was eligible under an existing, open claim in one state before filing a new claim in a different state.

The findings further reveal that the claimant did not know whether she could collect benefits under her open New York claim during the first full week of unemployment after separating from the Massachusetts employer. The claimant actively pursued her New York claim, making numerous calls to the New York agency in the weeks following her separation. *See* Findings of Fact ## 6 and 7. Once she learned from New York that it was closing the New York claim, she acted promptly, contacting DUA to open her claim on the same day. *See* Findings of Fact ## 7 and 8. Under these circumstances, we believe the claimant acted reasonably, as well as diligently, in an effort to find out how to obtain benefits in the proper jurisdiction.

We, therefore, conclude as a matter of law that the claimant established good cause to place an earlier effective date on her claim pursuant to G.L. c. 151A, § 25(a).

The review examiner's decision is reversed. The effective date for the claimant's Massachusetts claim shall be January 3, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 27, 2021



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

**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.

AB/rh