

Although the claimant received the disqualifying determination, she failed to timely file her hearing request because she was not checking her UI Online account due to a death in the family. Because failure to timely file an appeal due to a family member's death is not an allowable reason under 430 CMR 4.15 to file an appeal after 30 days, held the claimant did not demonstrate good cause for her late appeal within the meaning of G.L. c. 151A, § 39(b).

**Board of Review
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Issue ID: 0065 9613 45

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 affirm.

The claimant filed a claim for unemployment benefits with the DUA, effective August 30, 2020. On November 14, 2020, the DUA issued a disqualifying determination, denying benefits pursuant to G.L. c. 151A, §§ 29(a) and 1(r), based on the claimant's leave of absence from employment (disqualifying determination). The claimant appealed the disqualifying determination on March 16, 2021, which was 120 days after such determination was issued. On February 4, 2022, the DUA issued a determination denying a hearing on the appealed disqualifying determination on the ground that the claimant had filed the hearing request after the statutory deadline without showing justification for filing a late appeal (late appeal determination). The claimant then requested a hearing on the late appeal determination. Following a hearing, attended by the claimant, the review examiner affirmed the agency's late appeal determination in a decision rendered on September 2, 2022.

The review examiner concluded that pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14.–4.15, the claimant was not entitled to a hearing on the merits of the disqualifying determination, because she did not establish good cause to file a hearing request after the statutory deadline.

The Board accepted the claimant's application for review. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to make clarifying subsidiary findings from the record. Thereafter, the review examiner issued his consolidated findings of fact. 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, as well as the DUA's electronic record-keeping system, UI Online.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant failed to establish that there was good cause within the meaning of G.L. c. 151A, § 39(b),

to file his appeal late, is supported by substantial and credible evidence and is free from error of law, where the claimant failed to appeal timely due to a death in the family.

Findings of Fact

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

1. The claimant filed a claim for regular unemployment benefits effective August 30, 2020.
2. The claimant elected to receive electronic correspondence from the Department of Unemployment Assistance (DUA) on her profile.
3. On November 14, 2020, the DUA issued the claimant a Notice of Disqualification pursuant to G.L.c.151A §§ 29(a) [and] 1(r).
4. The Notice of Disqualification was made available to the claimant on the DUA's UI Online portal. The claimant did not learn of or become aware of the Notice of Disqualification in her UI Online account until speaking with a representative in approximately in mid-March 2021 who told the claimant to file an appeal.
5. The claimant was not having any interim problems with her email during the appeal period.
6. No one from [the] DUA discouraged her from appealing.
7. The claimant was not checking her account diligently because she was away because of a death in her family.
8. On March 16, 2021, the claimant appealed the November 14, 2020 determination, one hundred and twenty (120) days after the determination [was issued].

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 consolidated 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 consolidated findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we agree with the review examiner's decision that the claimant is not entitled to a hearing on the merits of the disqualifying determination.

The unemployment statute sets forth a time limit for requesting a hearing. G.L. c. 151A, § 39(b), provides, in pertinent part, as follows:

Any interested party notified of a determination may request a hearing within ten days after delivery in hand by the commissioner's authorized representative, or mailing of a said notice, unless it is determined...that the party had good cause for failing to request a hearing within such time. In no event shall good cause be considered if the party fails to request a hearing within thirty days after such delivery or mailing of said notice. . . .

The claimant filed a request for a hearing more than 120 days after the determination was issued. Consolidated Finding # 8. We consider 430 CMR 4.15, which provides that the thirty-day filing deadline shall not apply if the claimant can establish good cause. This regulation states, in pertinent part:

The 30-day limitation on filing a request for a hearing shall not apply where the party establishes that:

- (1) A Division employee directly discouraged the party from timely requesting a hearing and such discouragement results in the party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing;
- (2) The Commissioner's determination is received by the party beyond the 30 day extended filing period and the party promptly files a request for hearing;
- (3) The Commissioner's determination is not received and the party promptly files a request for a hearing after he or she knows that a determination was issued;
- (4) An employer threatened, intimidated or harassed the party or a witness for the party, which resulted in the party's failure to file for a timely hearing.

Because there is nothing in the record to suggest that a DUA employee discouraged the claimant from timely filing her appeal nor any evidence to suggest an employer threatened or harassed the claimant which resulted in her failure to file her appeal timely, we narrow our analysis to subsections (2) and (3) of 430 CMR 4.15.

Here, the claimant elected to receive electronic correspondence from the DUA, and the disqualifying determination was placed in her UI Online inbox when it was issued on November 14, 2020. *See* Consolidated Findings ## 2, 3, and 4. Since the claimant elected correspondence by e-mail, the disqualifying determination is deemed received on the date the correspondence was placed in her UI Online inbox. In this instance, the claimant timely received the determination on November 14, 2020.

The findings reflect that the claimant was not having any issues accessing her e-mail. *See* Consolidated Finding # 5. However, she failed to check her UI Online account regularly due to a death in the family, and, thus, she was unaware of the disqualifying determination until she spoke with a DUA representative at some point in the middle of March, 2021. *See* Consolidated Findings ## 4 and 7. Nothing in the record indicates that the claimant was prevented from accessing her account or that there were circumstances hindering her ability to contact a DUA representative to assist her in filing her appeal within the statutory period. The claimant was simply not checking her account.

Under 430 CMR 4.15, a claimant can file an appeal beyond 30 days only in limited circumstances. Death of a family member is not listed as one of the reasons. Thus, we conclude that the claimant failed to establish good cause for filing her late appeal of the disqualifying determination.

We, therefore, conclude as a matter of law that the claimant is not entitled to a hearing on the merits of the disqualifying determination, because she failed to establish good cause for filing a hearing request after the statutory deadline as permitted under G.L. c. 151A, § 39(b), and 430 CMR 4.15.

The review examiner's decision is affirmed. The claimant is not entitled to a hearing on the merits of the disqualifying determination dated November 14, 2020.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 23, 2023



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 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.

DY/rh