

In light of the mandatory language under G.L. c. 151A, § 62A(g), the claimant is entitled to have her claim pre-dated to the Sunday of the week when she became separated, because her employer did not provide her with the required written notice about how to file for unemployment 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: 0069 0288 91

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 her position with her employer on September 28, 2020. She filed a claim for unemployment benefits with the DUA on May 3, 2021, and sought to pre-date her claim to September 27, 2020. Her request to pre-date the claim was denied in a Corrected Notice of Disqualification issued on June 8, 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 13, 2023. We accepted the claimant’s application for review.

An earlier effective date was denied after the review examiner concluded, “Although the claimant showed good cause for not filing her claim timely, . . . [granting] this pre-date would affect the claimant’s three subsequent claims by shifting effective dates which may result in shifts of weekly benefit rates and may result in the need to adjudicate additional issues which may result in disqualification,” and, thus, she was not entitled to have her claim pre-dated to September 27, 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 her claim pre-dated to a September 27, 2020, 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 her 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, a temporary staffing agency, from 7/6/20 to 9/28/20, when she was laid off.
2. The claimant did not receive information about her right to file an unemployment insurance claim when she was laid off.
3. One of the claimant's friends told her she could file an unemployment insurance claim.
4. The claimant does not recall when her friend gave her this information.
5. The claimant called a Career Center and asked for assistance with filing a claim. She does not recall the date she called.
6. The person the claimant spoke with at the Career Center asked if she has a computer. The claimant said she did not have a computer.
7. The person at the Career Center told the claimant that the Career Center could not help her file a claim if she did not have a computer and hung up the phone.
8. In May of 2021, the claimant learned that she could receive help from the Asian American Civic Association (AACA). She called the AACA in May of 2021.
9. The claimant filed an unemployment insurance claim on 5/3/21 and obtained an effective date of her claim of 5/2/21. The weekly benefit rate for the claim effective 5/2/21 is \$289. The claimant exhausted this claim. She received thirty weeks of benefits from 5/2/21 to 12/18/21.
10. The claimant filed another unemployment insurance claim on 5/4/22, effective 5/1/22. The weekly benefit rate for the claim is \$111. She received benefits for the weeks beginning 11/27/22 to 12/10/22 and 1/8/23 to 4/29/23.
11. The claimant filed another unemployment insurance claim on 5/2/23, effective 4/30/23. The weekly benefit rate for the claim is \$223. The claimant received benefits for the weeks beginning 5/7/23 to 6/10/23 and continues to request benefits.
12. The claimant participated in the pre-date hearing in Issue Identification Number 69028891 on 5/1/23.

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. 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, we reject the review examiner's conclusion that the claimant is not entitled to have her 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 even though she concluded that the claimant established good cause for failing to file her claim for unemployment benefits immediately after separating from the employer. Instead of concluding that the claimant is eligible for the pre-date to which the statute requires, the review examiner instead reasoned:

The claimant's goal is to receive payments effective 10/4/20 [sic] and for the payments she received on her three subsequent claims to remain intact. Her goal is not to have an overpayment. Granting this pre-date would affect the claimant's three subsequent claims by shifting effective dates which may result in shifts of weekly benefit rates and may result in the need to adjudicate additional issues which may result in disqualification. A predate may result in overpayment.

We disagree with the review examiner's conclusion as a matter of law. The review examiner accepted as credible the claimant's testimony that her employer did not provide her with written information about her right to file an unemployment claim when she was laid off, as required by G.L. c. 151A, § 62A(g). See Finding of Fact # 2.

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 denied the claimant's request for a pre-date even after concluding that the claimant established good cause for failing to file a claim sooner. Regardless of any other potential repercussions that granting a pre-date might create for subsequent unemployment claims filed by the claimant, the statute mandates granting a pre-date if the claimant's former employer does not provide her 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 her claim made retroactive to the Sunday of the initial week that she would have been eligible for unemployment compensation after she separated from the employer. Since the claimant separated from the employer on September 28, 2020, she is entitled to a pre-date to Sunday, September 27, 2020.

We, therefore, conclude as a matter of law that, pursuant to G.L. c. 151A, § 62A(g), the claimant is entitled to begin receiving benefits beginning with the Sunday of the initial week that she would have been eligible for unemployment benefits.¹

The review examiner's decision is reversed. The claimant is entitled to have the effective date on her claim pre-dated to September 27, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 12, 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.

JPC/rh

¹During the period that the COVID-19 emergency benefits were in effect, from March 8, 2020, through September 4, 2021, the DUA had waived the one-week "waiting period" typically required by G.L. c. 151A, § 23. Although the DUA reinstated the one-week waiting period for all initial claims filed with an effective date of September 12, 2021, and thereafter, the claimant is not subject to a waiting week here for her claim beginning September 27, 2020.