

**Claimant re-opened a claim in May 2021 based on a notice he received in February 2021 informing him of a new extended benefits program, requesting an earlier effective date for his re-opened claim. Held not entitled to a pre-date of his re-opened claim because he did not show good show good cause pursuant to G.L. c. 151A, § 23(b), and 430 CMR 4.01(4)(b). The claimant received the notice of the DUA’s extended benefits program in a timely manner but chose to wait to re-open his claim despite understanding that the notice was time-sensitive.**

**Board of Review  
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**Issue ID: 0069 1338 35**

### 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 had filed his 2020-01 claim for unemployment benefits with the DUA effective March 15, 2020. He subsequently re-opened his claim on April 16, 2021, and requested that his re-opened claim be pre-dated to February 21, 2021. This request was denied in a determination issued by the DUA on June 27, 2022. 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 predate request in a decision rendered on November 19, 2022.

Benefits were denied after the review examiner determined that the claimant did not establish good cause for failing to file his claim sooner, and, thus, he was not eligible for a predate pursuant to G.L. c. 151A, § 23(b). 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 provide the claimant with notice of the applicable sections of law. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner’s decision, that the claimant’s circumstances did not establish good cause for a pre-date of his re-opened claim, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

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

1. The claimant filed an initial claim for unemployment insurance benefits, effective 3/15/20. The claimant certified his weekly eligibility timely before

exhausting his available regular benefits with the week ending 10/17/20. The claimant was eligible for extended benefits (PEUC 1.0) and certified his eligibility timely for the weeks ending 10/24/20 through 1/16/21.

2. Sometime in February 2021, the claimant received notice from the DUA that a second extension program was available and he needed to apply for the additional extension if he was still unemployed. The claimant saw that the notice stated it was time sensitive; however, he did not treat the notice as being time sensitive and he did not immediately act on it. The claimant “sat on it” before eventually contacting the DUA in April when an acquaintance in Arizona told the claimant that extended benefits were available and he should contact the state of Massachusetts.
3. On 4/16/21, the claimant contacted the DUA to request the second extension. The claimant requested that he be allowed to certify for the seven previous weeks, which included weeks ending 2/21/21 through 4/10/21. The claimant did not work for any employer during the period of 1/16/21 and 4/16/21.
4. On 5/14/21, the claimant completed a DUA factfinding questionnaire regarding his request to claim benefits for weeks prior to when he requested the second extension. In his responses, the claimant indicated that he attempted to certify the weeks in question on 5/10/21.
5. On 6/27/22, the DUA issued the claimant a Notice of Disqualification, finding him ineligible for benefits under Section 25(a) of the law for the week beginning 3/14/21 through 4/10/21.
6. On 7/7/22, the claimant appealed the Notice of Disqualification.

### 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. We further agree with the review examiner’s legal conclusion that the claimant is ineligible to have his re-opened claim pre-dated.

In rendering our decision, we consider a number of statutory and regulatory provisions, as well as DUA policy applying those provisions. We start with 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. . . .

G.L. c. 151A, § 24 further states:

[An individual, in order to be eligible for benefits under this chapter, shall] . . . (c) Have given notice of his unemployment, by registering either in a public employment office or in such other manner, and within such time or times, as the commissioner shall prescribe, and have given notice of the continuance of his unemployment and furnished information concerning any remuneration received by him during the period for which he claims benefits, in accordance with the procedures prescribed by the commissioner.

Generally, a claim's effective date begins on the Sunday preceding the date that the individual opens (or re-opens) a claim. G.L. c. 151A, § 23(b). This statutory provision also authorizes the DUA to pre-date a request for benefits, making the claim's effective date (or re-opening effective date) retroactive to a point in time before the week in which the claimant actually completes the steps necessary to meet the agency's registration and filing requirements. *See* G.L. c. 151A, § 23(b); 430 CMR 4.01(3) and (4). The DUA regulations make clear that such a pre-date will only be granted for good cause. 430 CMR 4.01(3) and (4)(b).

In this case, the claimant conceded that, at the time he received the notice of the second extension program, he did not treat the notice as time-sensitive despite language on the notice stating otherwise. Consolidated Finding # 2. He did not act on the notice until several weeks later, when an acquaintance encouraged him to contact the Massachusetts DUA about the extended benefit program. Consolidated Finding # 3. As the claimant made the volitional choice to disregard the time-sensitive nature of the notice and was not otherwise unable to reopen his claim as a result of circumstances beyond his control, we believe he did not articulate good cause within the meaning of 430 CMR 4.01(3) and (4)(b) entitling him to an earlier effective date.

We, therefore, conclude as a matter of law that the claimant is not entitled to have his claim pre-dated for good cause pursuant to G.L. c. 151A, § 23(b), and 430 CMR 4.01(4)(b).

The review examiner's decision is affirmed. The claimant is denied benefits for the period between March 14, 2021, and April 10, 2021.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 13, 2023**



Paul T. Fitzgerald, Esq.  
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 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](http://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.

LSW/rh