

Pursuant to G.L. c. 151A, § 71, the employer had no standing to file an appeal of the DUA's Notice of Approval to pay benefits under G.L. c. 151A, § 28A. This is because the DUA's Notice was issued more than a year after the claimant received her first benefit payment subject to the provisions of G.L. c. 151A, § 28A. By not redetermining the claimant's eligibility within one year, the DUA had effectively decided not to reconsider the award of benefits. Its decision was final and not subject to appeal.

**Board of Review
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Issue ID: 0071 2269 54

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 reverse.

The claimant filed a claim for unemployment benefits with the DUA, effective March 15, 2020, which was approved for the period between June 21, 2020, and September 1, 2020, in a Notice of Approval issued on July 27, 2021 (Notice). The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and denied benefits for the period between June 21, 2020, and September 1, 2020, in a decision rendered on November 12, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had reasonable assurance of re-employment, and, thus, was disqualified under G.L. c. 151A, § 28A from June 21, 2020, through September 1, 2020. 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.

Ruling of the Board

We need not decide whether the review examiner's decision to disqualify the claimant under G.L. c. 151A, § 28A, was correct, because the employer was improperly given appeal rights pursuant to G.L. c. 151A, § 71.

The unemployment statute imposes time limits on the DUA's authority to redetermine eligibility for benefits. G.L. c. 151A, § 71, provides, in relevant part, as follows:

The commissioner may reconsider a determination whenever he finds that (1) an error has occurred in connection therewith; or (2) wages of the claimant pertinent to such determination but not considered in connection therewith have been newly

discovered; or (3) benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentation of fact; provided, however, that with respect to (1) and (2) *no such redetermination shall be made after one year from the date of the original determination*; and provided, further, that with respect to (3) no such redetermination shall be made after four years from the date of the original determination

The decision of the commissioner not to reconsider a decision shall be final and not subject to appeal under any provision of this chapter.

(Emphasis added.)

The DUA is prohibited from paying benefits without first determining that a claim is valid and determining the amount of benefits payable pursuant to that claim. *See* G.L. c. 151A, § 39(a); *see also* Board of Review Decision 0060 3067 04 (Feb. 1, 2023). While the DUA's electronic database, UI Online, shows that the DUA issued its first payment under the claimant's 2020-01 claim on April 1, 2020, her eligibility for benefits under G.L. c. 151A, § 28A, was not at issue until the week of June 21, 2020. A review of the payment information in UI Online confirms the DUA issued its payment of the claimant's full weekly benefit amount for the week of June 21, 2020, on June 30, 2020. With this payment, the DUA is deemed to have determined on June 30, 2020, that G.L. c. 151A, § 28A, did not disqualify the claimant from receiving any benefits.¹

This means that the DUA's July 27, 2021, Notice was actually a redetermination. Since nothing in the record or UI Online indicates that the benefits she received during the period between June 21, 2020, and September 1, 2020, were paid based upon a misrepresentation of fact, the DUA had one year within which it could redetermine her eligibility for benefits. Here, the DUA's Notice was issued more than a year later. Pursuant to G.L. c. 151A, § 71, the agency did not have authority to do so.

The DUA's failure to take any action to redetermine the claimant's award of benefits within one year was effectively a decision not to reconsider her eligibility under G.L. c. 151A, § 28A. As stated in G.L. c. 151A, § 71, above, DUA's decision not to reconsider is final and not subject to appeal. Accordingly, the employer was improperly allowed to file an appeal.

We, therefore, conclude as a matter of law that the claimant may not be disqualified pursuant to G.L. c. 151A, § 28A, because pursuant to G.L. c. 151A, § 71, the employer had no standing to file an appeal.

¹ The claimant continued to receive a weekly benefit amount based on all of her base period wages. If the DUA had determined that the employer had provided reasonable assurance of re-employment to the claimant between academic years pursuant to G.L. c. 151A, § 28A, the wages paid by the instant employer would have been excluded in the calculation of the weekly benefit amount paid to the claimant during this period.

The review examiner's decision is reversed. The claimant is entitled to a weekly benefit amount based upon her total base period earnings during the period between June 21, 2020, and September 1, 2020, if she is otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 28, 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.

LSW/rh