

Where the claimant viewed her UI Online inbox and received the determination by mail at her mother's address, but did not appeal the determination for over a year, held she did not show good cause for filing a late appeal pursuant to G.L. c. 151A, § 39(b) and 430 CMR 4.15.

**Board of Review
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Issue ID: 0071 7244 92

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) which concluded that the claimant did not have good cause for failing to timely request a hearing on a determination issued on June 4, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant filed a claim for benefits with the DUA effective May 31, 2020. On June 4, 2020, the DUA issued a monetary determination, which she appealed on July 28, 2021. On December 23, 2021, the DUA issued a Notice of Disqualification, stating that there was no justification to consider her request for a hearing on the monetary determination timely (late appeal determination). Following a hearing on the late appeal determination, the review examiner affirmed the agency's determination in a decision dated August 20, 2022. The claimant appealed the review examiner's decision, and the Board accepted the claimant's application for review.

A hearing on the monetary determination was denied after the review examiner concluded that the claimant had not shown good cause for the late appeal pursuant to G.L. c. 151A, § 39(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 obtain additional evidence about the claimant's correspondence preferences and circumstances related to filing the late appeal. The claimant attended the remand hearing. Thereafter, the review examiner issued his 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, which concluded that the claimant did not have good cause for failing to timely request a hearing on the monetary determination, is supported by substantial and credible evidence and is free from error of law, where the record indicates that the claimant saw the determination but filed her hearing request 419 days after it was issued.

Findings of Fact

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

1. The claimant filed a claim for Unemployment Assistance (UA) which was determined to be effective May 31, 2020.
2. The claimant elected to receive correspondence from the Department of Unemployment Assistance (DUA) by U.S. mail.
3. On June 4, 2020, the DUA issued the claimant a Monetary Determination.
4. The claimant viewed her UI online [sic] on June 4, 2020 and on June 15, 2020. The claimant did not open and read the Monetary Determination on those dates because she did not see anything new in her account those times.
5. The claimant did not receive the Monetary Determination sent by U.S. mail timely after issuance because she became homeless in March 2020 and did not have access to her apartment. The claimant was “sofa surfing” for “quite some time”. The claimant used her mother’s address in [City], Massachusetts for mail. The claimant’s mail was forwarded to her mother’s address between May and August. The claimant moved into a new apartment on September 17. By September, the claimant had viewed the Monetary Determination forwarded via U.S. mail to [City].
6. The claimant did not file her hearing request within 10 days of the June 4, 2020 Monetary Determination because she was not aware of the Monetary Determination during that time. The claimant’s life was not stable, and she generally did not have the means to go online when she needed to. The claimant did not have anyone who could assist her in viewing her UI online inbox during this period of instability. Multifactor authentication was required for the claimant to access her UI online account and the claimant did not always have the means to access the required multifactor authentication code.
7. In approximately April or May 2020, the claimant’s grandmother was diagnosed with Alzheimer’s disease. The grandmother lived alone, and the claimant was “going back and forth” assisting with caring for her for a couple of months until the claimant’s family decided what care for the grandmother would be. The claimant could not live with the grandmother because she was in subsidized housing.
8. The claimant called DUA numerous times between June 4, 2020 and July 2021, and had trouble getting assistance with her claim. At times, representatives instructed the claimant they could not help her. On July 28, 2021, the claimant spoke with a representative who explained the June 4, 2020 Monetary determination and the appeal process.
9. On July 28, 2021, the claimant appealed the June 4, 2020 Monetary Determination.

Credibility Assessment:

Throughout the hearing, the claimant's testimony was highly credible and her answers with [sic] crisp, clear, and responsive. Her candor regarding the stressful circumstances in which she found herself was evident. The claimant's testimony was consistent between the original hearing and the remand hearing about the circumstances.

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 believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant did not have good cause for her late appeal.

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

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. . . .

DUA regulations specify circumstances which constitute good cause for filing a late appeal within the meaning of G.L. c. 151A, § 39(b). Specifically, if an appeal is filed beyond 30 days, 430 CMR 4.15 provides:

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.

The claimant viewed her UI Online inbox on the date that the notice was issued, which suggests that she was aware of the existence of the notice in June, 2020, but she failed to appeal the notice until July 28, 2021, 419 days after it was issued. Consolidated Findings ## 4, and 8. Although the claimant was homeless from May, 2020, to August, 2020, she moved into an apartment in September, 2020, and viewed her forwarded mail. Consolidated Finding # 5. While we recognize the claimant's difficult personal circumstances, late appeal requests submitted after 30 days are allowed only in a limited number of circumstances.

Nothing in the record indicates that a DUA employee discouraged her from filing a hearing request or that a former employer harassed her in any way. Even if she did not see the monetary determination notice when she looked in UI Online numerous times between June 4, 2020, and July, 2021, we can reasonably infer that, at some point, she opened the mail that was forwarded to her mother's address between May and August, 2020, and saw the notice. This means that, when she received the monetary determination, she did not promptly file a request for a hearing. Under these circumstances, the claimant does not meet the criteria for filing her appeal beyond 30 days after the determination date, and a hearing on the monetary determination will not be granted.

We, therefore, conclude as a matter of law that the claimant did not have good cause for filing a late appeal within the meaning of G.L. c. 151A, § 39(b) or 430 CMR 4.15.

The review examiner's decision is affirmed. The claimant is not entitled to a hearing on the merits the June 4, 2020, monetary determination.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 22, 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

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.

MR/rh