

The claimant had justification for his late appeal, as he did not receive the original email notice from the DUA to check his UI Online account for a determination, and then promptly filed a hearing request upon becoming aware of it.

**Board of Review
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Issue ID: 0073 4686 73

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.

On January 21, 2021, the DUA issued to the claimant a Notice of Disqualification, pursuant to G.L. c. 151A, § 25(a), stating that the claimant was not eligible for benefits because he had failed to provide sufficient documentary evidence to verify his identity (Issue ID No. 0058 9091 88). The claimant appealed the determination on October 25, 2021, 275 days after the Notice was issued. On November 3, 2021, the DUA issued a Notice of Disqualification, stating that the claimant did not have justification for submitting his appeal on the underlying issue after the statutory deadline. The claimant requested a hearing on this late appeal determination. Following a hearing on the merits concerning the late appeal, the review examiner affirmed the agency's initial determination in a decision rendered on June 2, 2022. We accepted the claimant's application for review.

A hearing on the merits of the January 21, 2021, Notice of Disqualification was denied after the review examiner determined that the claimant did not have justification for filing his appeal past the ten-day deadline pursuant to G.L. c. 151A, § 39(b). 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 did not have justification for filing his appeal past the ten-day deadline, is supported by substantial and credible evidence and is free from error of law, where the review examiner found that the claimant did not receive emails from the agency instructing him to check his UI Online account.

Findings of Fact

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

1. The claimant filed a new claim for unemployment benefits, effective for the week beginning November 24, 2019.

2. Upon filing his claim, the claimant elected to receive his correspondence electronically.
3. The claimant believed that he would receive his correspondence electronically.
4. On January 20, 2021, the Department of Unemployment Assistant (DUA) sent the claimant an email that a Notice of Disqualification (Notice) was available for his review in his UI Online Inbox.
5. The claimant did not receive the email from the DUA for unknown reasons.
6. The Notice notified the claimant that he had been disqualified from receiving benefits under Chapter 151A Section 25(a) of the Law because the claimant failed without good cause to present proper identification, and therefore, did not meet the filing and registration requirements.
7. Written instructions printed on the Notice notified the claimant of the means by which he could request a hearing on the matter and the time parameter which such an appeal had to be filed to be considered timely.
8. The claimant received the Notice on January 20, 2021, when it was issued to him in his UI Online Inbox.
9. The claimant was not regularly checking his UI Online Inbox because he went back to work and did not know he should be regularly checking his UI Online Inbox.
10. In October, 2021, the claimant contacted the DUA because he logged into his UI Online account and learned that he had an overpayment on his account.
11. The claimant spoke with a DUA Representative who informed him that he had been issued the Notice and explained the appeals process to him.
12. On October 22, 2021, the claimant filed his request for appeal.
13. October 22, 2021, is the 275th calendar day following January 20, 2021.
14. The claimant did not speak to anyone at his employer about the Notice.
15. The claimant was not discouraged from filing an appeal by anyone at the DUA.

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 original conclusion is free from error of law.

Upon 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 legal conclusion that the claimant did not articulate justification for failing to file a timely appeal, as she found that the claimant did not receive the email notification to check his UI Online account.

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 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. . . .

Pursuant to G.L. c. 151A, § 39(b), the claimant had ten days to appeal the January 20, 2021, Notice of Disqualification. Since the claimant did not file the appeal until several months after the issuance of the underlying determination, the standard is whether there is justification for considering the appeal to be timely, rather than whether there is good cause for the late appeal. *Compare* 430 CMR 4.14 (allowing hearing on late appeal if appeal is filed within thirty days of issuance of determination and good cause is shown) with 430 CMR 4.15 (allowing hearing on late appeal if appeal filed after thirty days and justification shown).

The pertinent DUA regulation, 430 CMR 4.15, provides, in relevant part, as follows:

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

The review examiner found that the claimant did not receive an email from the DUA to his personal email account notifying him that he had important documents in his UI Online Inbox, which required review. *See* Finding of Fact # 5. The right to receive notice and an opportunity to be heard is a fundamental right. The Due Process Clause of the Fourteenth Amendment prohibits the States from depriving any person of property without providing notice and an opportunity to be heard. Dusenbery v. United States, 534 U.S. 161, 167 (2002). Specifically, it requires "notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (further citations omitted). Since the claimant did not receive a DUA communication to look for the Notice of Disqualification, we believe that he did not receive the requisite notice necessary to timely appeal.

Moreover, the findings indicate that, upon learning about the disqualifying determination, the claimant promptly filed his request for a hearing. *See* Findings of Fact ## 10–12.

We, therefore, conclude as a matter of law that the claimant established justification for filing his appeal beyond the statutory appeal period pursuant to G.L. c. 151A, 39(b), and 430 CMR 4.15.

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits on the underlying identity verification determination (Issue ID No. 0058 9091 88).

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 19, 2022



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.

JMO/th