

The claimant filed for benefits in April 2020, and was issued her first benefit payment on April 24, 2020. DUA issued a determination under G.L. c. 151A, § 25(e), in May 2022, more than two years later, disqualifying her retroactively to the beginning of her claim. Held the determination was time-barred pursuant to G.L. c. 151A, § 71. Therefore, the claimant remained eligible for benefits.

**Board of Review
19 Staniford St., 4th Floor
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: 0073 7326 76

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant filed a claim for unemployment benefits with the DUA on April 12, 2020, which was assigned an effective date of April 5, 2020. She was initially approved and received benefit payments. However, in a determination issued on May 20, 2022¹, the DUA disqualified the claimant from receiving benefits retroactive to the beginning of her claim. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner overturned the agency's determination in a decision rendered on March 7, 2023, concluding that the claimant had been discharged by the employer due to lack of work and, thus, was not disqualified under G.L. c. 151A, § 25(e)(2). We accepted the employer's application for review.

Ruling of the Board

We need not decide whether the review examiner's decision was correct, because the underlying determination was time-barred 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

¹ The May 20, 2022, determination was a Notice of Disqualification.

redetermination shall be made after four years from the date of the original determination

(Emphasis added.)

The DUA is prohibited from paying benefits without first determining that the claim is valid, including that the claimant separated for qualifying reasons. *See* G.L. c. 151A, §§ 25(e) and 39(a). In this case, the claimant was initially awarded benefits following her separation from employment. The DUA’s electronic record-keeping database, UI Online (UI Online), shows that the DUA issued its first payment to the claimant on April 24, 2020. By issuing that payment, the DUA is deemed to have determined that the claimant’s separation from the employer was qualifying under G.L. c. 151A, § 25(e).

This means that the DUA’s May 20, 2022, Notice of Disqualification was actually a redetermination. Since nothing in the record or in UI Online indicates that those benefits 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 of Disqualification, which disqualified her based upon that separation, was issued more than two years later. Pursuant to G.L. c. 151A, § 71, the agency did not have authority to do so.

The review examiner’s decision, which aligns with the agency’s initial determination to award benefits, is affirmed. The claimant is entitled to receive benefits for the week beginning April 26, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 5, 2023



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

JMO/th