

The employer does not lose party status under G.L. c. 151A, § 38(b), because its agent provided timely responses to the DUA’s fact-finding questionnaires. While the answers provided were not always responsive to the questions asked, they satisfied the requirements of G.L. c. 151A, § 38A, because they provided sufficient facts for the DUA to adjudicate the claimant’s eligibility for benefits. Therefore, the employer shall be a party to future proceedings on the claim, and it may be relieved of charges paid on the claim, if applicable.

**Board of Review
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Issue ID: 0074 0714 82

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) denying the employer party status and relief of benefit charges. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits effective June 20, 2021. The agency sent the employer a questionnaire to complete regarding the claimant’s employment status. The deadline to respond to the questionnaire was July 2, 2021. The employer returned the completed questionnaire to the agency on June 30, 2021. Subsequently, the DUA issued another questionnaire pertaining to the claimant’s employment status with a due date of July 7, 2021. The employer returned this second questionnaire on July 6, 2021. The agency determined that the employer’s response to the questionnaire was not timely and/or adequate in a determination issued on November 26, 2021. The employer appealed, and its agent attended the hearing. In a decision rendered on September 10, 2022, the review examiner affirmed the agency determination, concluding that the employer did not provide adequate responses to the agency’s request for information, as required by G.L. c. 151A, § 38A, and as a result, the employer was no longer a party to further proceedings. We accepted the employer’s application for review.

The issue on appeal is whether the review examiner’s decision, which concluded that the employer lost party status and relief of benefit charges pursuant to G.L. c. 151A, § 38A, because the employer’s response to a request for information was inadequate, is supported by substantial and credible evidence and is free from error of law.

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 employer’s appeal.

Findings of Fact

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

1. The claimant filed a claim for unemployment benefits effective June 20, 2021.

2. The employer uses a third-party agent to respond to correspondence from the Department of Unemployment Assistance (DUA). The employer's agent checks their client's UI Online database daily for any new claims filed against the employer. The employer's agent then uploads the claims to their own internal system and requests separation information from the employer. The employer's agent then analyzes the information, and provides a response to the DUA by the deadline.
3. The employer's third-party agent completed and returned a "Notification – Lack of Work Notification" (the Notification) on June 30, 2021, reporting the claimant was still employed full time. The Notification was due on July 2, 2021.
4. Based upon the employer's response, the DUA sent the employer a "Still Employed – Part Time Employment" questionnaire (the questionnaire) to complete.
5. The questionnaire was due by July 7, 2021.
6. The employer's third-party agent received the questionnaire on the employer's behalf.
7. The questionnaire did not contain details regarding the claimant's work schedule.
8. The questionnaire does not contain information regarding how many hours the claimant has worked during the time period in question.
9. When asked to describe the claimant's weekly schedule, the process by which the claimant receives their schedule, who provides the claimant with their schedule, how many hours per week the claimant works, whether the claimant accepts all hours given to them, and how many hours the claimant worked the week beginning August 29, 2021, the third-party agent responded in the questionnaire, "This employee is still employed and working full time. When asked, the claimant stated they never filed a claim. We believe this to be fraudulent."
10. The employer's third-party agent electronically submitted the questionnaire, which the DUA received on July 6, 2021.
11. On November 26, 2021, a Notice of Disqualification disqualified the employer from being considered a party to further proceedings relating to the allowance of the claim and/or relief of charges based upon the inadequate and/or late response.

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 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 employer's response to the agency's request for information was inadequate.

G.L. c. 151A, § 38(b), provides, in relevant part, as follows:

Notice of a claim so filed shall be given promptly by the commissioner or his authorized representative to the most recent employing unit of the claimant and to such other employing units as the commissioner may prescribe. If such employing unit has reason to believe that there has been misrepresentation or has other reasons which might affect the allowance of said claim, or has been requested by the commissioner to furnish any other pertinent information relating to said claim, it or he shall return the said notice to the indicated employment office with the reasons or information stated thereon within eight days after receipt, but in no case more than ten days after mailing of said notice, . . . Failure without good cause to return said notice and information within the time provided in this section or prescribed by the commissioner shall bar the employing unit from being a party to further proceedings relating to the allowance of the claim

Also relevant in this appeal is G.L. c. 151A, § 38A, which provides as follows:

(a) If the director, or the director's authorized representative, determines, after providing written or electronic notice to the employer, that a payment of benefits was made because the employing unit, or an agent of the employing unit, was at fault for failing to respond timely or adequately to any request of the department for information relating to the claim for benefits, then: (i) the employing unit, except for employing units making payments into the Unemployment Compensation Fund under section 14A, shall not be relieved of charges on account of any such payment of benefits; and (ii) if the employing unit makes payments into the Fund under section 14A, it shall not be relieved from reimbursing the fund on account of any such payment of benefits. **For purposes of this subsection, a response shall be considered inadequate if it fails to provide sufficient facts to enable the department to make the proper determination regarding a claim for benefits.** A response shall not be considered inadequate if the department fails to ask for all necessary information, except in any case where there has been a failure to respond. (Emphasis added.)

G.L. c. 151A, § 38(b), provides that a failure by the employer to timely respond to a request for information by the agency can result in loss of party status. However, as is evident from the findings of fact, the employer's agent returned both questionnaires to the department prior to the assigned deadline. Findings of Fact ## 3, 5, and 10. Accordingly, the review examiner erred in barring the employer from being party to further proceedings.

The review examiner also concluded that the employer's responses to the second questionnaire were inadequate because the employer's agent simply repeated the employer's contentions about the claimant's employment status in response to each of the questions asked. While the review examiner is correct that this repeated statement was unresponsive to some of the questions articulated in the questionnaire, we do not believe that necessarily renders the employer's response inadequate pursuant to G.L. c. 151A, § 38A. Because the questionnaires are standard forms designed to address a wide variety of circumstances, there will frequently be situations where some of the questions included in the document are not applicable to the facts of a particular case. Accordingly, the law requires only that a party's response provide sufficient facts for the DUA to adjudicate the claimant's eligibility for benefits.

At issue in the underlying case is whether the claimant was in total or partial unemployment pursuant to G.L. c. 151A, §§ 29 and 1(r). *See* Finding of Fact # 4. In response to questions about the claimant's employment status, the employer explained that the claimant was "still employed [with the employer] and working full time." Finding of Fact # 9. Even though the employer did not provide specifics about the claimant's hours or daily schedule in the questionnaire, the facts presented in their response still contained sufficient detail for the DUA to adjudicate the claimant's eligibility for benefits under G.L. c. 151A, §§ 29 and 1(r). *See* Findings of Fact ## 7-9

We, therefore, conclude as a matter of law that the review examiner's conclusion that the employer did not adequately respond to the DUA's request for information is not free from error of law, because the employer's response was adequate for the DUA to make a proper determination as to the claimant's eligibility.

The review examiner's decision is reversed. The employer shall not be penalized pursuant to G.L. c. 151A, §§ 38(b) or 38A, because its response to the agency was both timely and adequate.



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 29, 2022

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.

LSW/rh