

The claimant showed good cause for an earlier claim effective date because severe mental health issues impacted his occupational and social functioning to the point that he was not emotionally capable of filing a claim. Such constitutes compelling personal circumstances for the delay.

**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: 0074 8429 39

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 an earlier effective date in a claim for unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from his position with the employer on December 1, 2021. He filed a claim for unemployment benefits with the DUA on December 19, 2021, seeking to pre-date his claim to December 5, 2021. His request to pre-date the claim was denied in a determination issued on February 28, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency's initial determination and denied the request to pre-date the claim in a decision rendered on April 26, 2022. We accepted the claimant's application for review.

An earlier effective date was denied after the review examiner determined that the claimant did not have good cause for failing to file a timely claim for benefits, and, thus, he was not entitled to have his claim pre-dated to December 5, 2021, under G.L. c. 151A, §§ 23(b) and 24(c). 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 regarding the reason the claimant did not file at the time he separated. Only the claimant attended the remand hearing. Thereafter, the review examiner issued her 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 that the claimant did not show good cause to have his claim pre-dated because he was dealing with drug abuse, anxiety, and depression following his discharge, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. On a claim for benefits filed on 12/19/21, the claimant requested that his claim be predated to Sunday 12/5/21. This would be also considered the week ending 12/11/21.
2. The request was denied, and the effective date of the claim was established as Sunday, 12/19/21, in accordance with the provisions of Section 23(b) of the Law and 430 CMR 4.01.
3. The claimant was separated from his employer on 12/1/21 as he was discharged. The claimant was an Athletic Trainer/Medical Assistant for the instant employer.
4. At the time he was separated, he was provided with information regarding his right to file an unemployment claim. The claimant had filed a previous claim for unemployment.
5. The claimant did not file for unemployment insurance during the week beginning 12/5/21 as he was stressed out from how he was discharged and the allegations surrounding his separation. After reaching out about an individual's mental health, the claimant had been accused and discharged by the employer for having a sexual attraction with an underage child. This affected the claimant's mental health. He was dealing with drug addiction, anxiety and depression.
6. The claimant was receiving online therapy by speaking with a Counselor about his marijuana addiction, anxiety and depression. The claimant may have been on medication at this time but is unsure. He would have therapy sessions once a week or biweekly but again he is unsure.
7. The claimant was not emotionally capable of filing a claim during this time but physically he could file a claim. He was mentally not capable of working during this time.
8. The claimant's mental health prevented him from filing a claim until 12/19/21. He was [not] aware of the consequences of him not filing sooner. He sometimes over looks a lot of the fine print.
9. Severe depression, anxiety and overall cognitive function impeded the claimant's [ability] to file a claim for benefits on or around December 1, 2021. He had a hard time retaining information, reading and concentrating. He had short and long term memory issues.
10. In time, the symptoms or conditions became less severe as he decided to accept what happened and decided to move on withdrawing from his drug use, allowing him to function mentally.

11. On a medical letter dated 3/7/22 from the claimant's therapist, the therapist indicates the claimant was seen from 1/5/22 to 2/22/22 as an outpatient for concerns regarding depression and anxiety and that the symptoms from these conditions caused distress to the claimant and impaired his occupational and social functioning. No other documentary medical evidence was offered at the hearing to verify testimony in the record.
12. The claimant was in total unemployment during the weeks beginning 12/5/21 through 12/18/21.
13. On 12/19/21, the claimant filed for unemployment insurance benefits.
14. The claimant's claim was established as Sunday, 12/19/21.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's Consolidated Findings of Fact except as follows. Consolidated Finding # 12, which states the claimant was in total unemployment during the period between December 5, 2021, and December 18, 2021, is not a factual finding. It is a legal conclusion, which at this stage of the proceedings is left to the Board of Review. *See Dir. of Division of Employment Security v. Fingerman*, 378 Mass. 461, 463-464 (1979) ("Application of law to fact has long been a matter entrusted to the informed judgment of the board of review."). Additionally, as the only legal issue before the Board is whether the claimant is entitled to an earlier effective date for his claim, any consideration of his unemployment status is inapposite. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we conclude that the claimant has shown good cause to have his claim pre-dated.

G.L. c. 151A, § 25(a), provides, in relevant part, as follows:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for—(a) Any week in which he fails *without good cause* to comply with the registration and filing requirements of the commissioner. The commissioner shall furnish copies of such requirements to each employer, who shall notify his employees of the terms thereof when they become unemployed.

(Emphasis added.)

In order to open a claim for unemployment benefits, an individual must register with the DUA. G.L. c. 151A, § 24(c). For individuals in total unemployment, the effective date is the Sunday immediately preceding the date of registration. G.L. c. 151A, § 23(b).

Pursuant to its own regulations at 430 CMR 4.01(3) and (4), an earlier effect date may be granted for good cause. The DUA recognizes several reasons as good cause to pre-date a claim¹:

- The claimant could not file because of illness, death in the family, or other compelling personal reasons.
- The claimant did not receive written information from the employer on applying for benefits as required by [G.L. c. 151A] § 62A(g).
- The claimant presents credible information establishing that a DUA employee instructed the claimant not to apply earlier.
- The claimant found new full-time employment that began in the middle of a week (if requesting a predate to a week of partial unemployment).
- The claimant did not know how to file a claim, took reasonable action under the circumstances to find out how to apply, but did not acquire the knowledge within the first full week of unemployment.
- The claimant attempted to file a claim for benefits by phone or online, but was unsuccessful due to technical difficulties.
- The claimant had difficulty applying for benefits due to limited English proficiency.

If a claimant is allowed to have his claim pre-dated, he is deemed to have registered and filed during the week of the earlier effective date. *See* 430 CMR 4.01(3)(a).

In her decision, the review examiner denied the claimant's request for a pre-date, after concluding that the claimant did not have good cause for failing to file his claim for unemployment benefits shortly after he was laid off from his employer on December 1, 2021. We disagree.

At the time that the claimant was discharged, his severe depression, anxiety, and decreased cognitive functioning impacted his occupational and social functioning to the point that he was not emotionally capable of filing a claim until December 19, 2021. *See* Consolidated Findings ## 7–9 and 11. In light of this record, we conclude that the claimant presented substantial and credible evidence to show that compelling personal circumstances precluded the claimant from filing for benefits immediately upon separation from employment.

We, therefore, conclude as a matter of law that the claimant established good cause to place an earlier effective date on his claim pursuant to G.L. c. 151A, § 25(a).

The review examiner's decision is reversed. The claimant is entitled to have the effective date on his claim pre-dated to December 5, 2021.

¹ *See* DUA Adjudication Handbook, Chapter 2, pp 11–12.

N.B.: The record indicates that the claimant may not have been capable of working during the period between December 5, 2021, and December 18, 2021. For this reason, we are asking the agency to investigate the claimant's eligibility for benefits under the provisions of G.L. c. 151A, § 24(b).

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 18, 2022



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.

LSW/rh