

The claimant received the disqualifying determination but failed to file a timely appeal because she was confused and did not understand why she was denied benefits. Held claimant’s confusion is not a circumstance beyond her control which constitutes good cause within the meaning of G.L. c. 151A, § 39(b), and 430 CMR 4.14.

**Board of Review
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Issue ID: 0074 8445 20

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 the claimant a hearing on the merits in connection with a determination to deny 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, effective November 28, 2021. On December 28, 2021, the DUA issued a disqualifying determination denying benefits pursuant to G.L. c. 151A, § 24(b), based on the claimant’s limited availability for work (disqualifying determination). The claimant appealed the disqualifying determination on January 10, 2022, 14 days after such determination was issued. On May 2, 2022, the DUA issued a determination denying a hearing on the appealed disqualifying determination on the ground that the claimant had filed the hearing request after the statutory deadline without showing good cause for filing a late appeal (late appeal determination). The claimant then requested a hearing on the late appeal determination on December 22, 2022. Following a hearing, attended by the claimant, the review examiner affirmed the agency’s late appeal determination in a decision rendered on January 28, 2023.

The review examiner concluded that pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14.–4.15, the claimant was not entitled to a hearing on the merits of the disqualifying determination, because, although she established good cause for submitting her late appeal of the disqualifying determination, she did not establish justification to file a hearing request on the late appeal determination after the statutory deadline.

The Board accepted the claimant’s application for review. 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, that the claimant had good cause for failing to timely appeal a disqualifying determination but was not entitled to a hearing on the merits because she had appealed a subsequent determination after the statutory deadline, is supported by substantial and credible evidence and is free from error of law.

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 with the Department of Unemployment Assistance (DUA) on December 4, 2021. The effective date of the claim was November 28, 2021.
2. The claimant chose to receive correspondence from the DUA electronically.
3. On December 28, 2021, the DUA issued a Notice of Disqualification (the Notice) to the claimant stating your availability for work is too restrictive under Section 24(b) of the law.
4. The December 28, 2021, Notice of Disqualification further stated that the determination would become final unless the claimant requested a hearing within ten-calendar days after the date of mailing.
5. The claimant received the December 28, 2021, notice when it was properly placed in [her] UI Online Inbox.
6. On or around January 10, 2022, the claimant called the DUA call center to understand why [she] was denied and what [she] needed to do. The representative advised [her] to file a late appeal.
7. On January 10, 2022, the claimant filed an electronic appeal of the December 28, 2021, notice.
8. On May 2, 2022, the DUA issued the claimant a second Notice of Disqualification, indicating that [she] did not have good cause for [her] late appeal, having filed it 14-days after it was issued.
9. On December 22, 2022, the claimant filed an electronic appeal of the May 2, 2022, Notice of Disqualification. The appeal was late, having been filed 234 days after the Notice was issued.
10. The claimant filed this appeal late because [she] did not know [she] was disqualified and did not think [s]he had anything to appeal.
11. On or around December 22, 2022, the claimant spoke to a DUA representative, who advised [her] to file an appeal.

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, while we agree with the review examiner's ultimate decision that the claimant is not entitled to a hearing on the merits of the disqualifying determination, we do so on different grounds.

The unemployment statute sets forth a time limit for requesting a hearing. 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 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. . . .

Pursuant to 430 CMR 4.14, good cause is defined as "circumstances beyond one's control that prevented the filing of a request for hearing within the prescribed ten-day filing period."

Here, the review examiner determined that the claimant had good cause for filing a late appeal of the disqualifying determination because she was confused and did not understand why she was being denied benefits. Even if true, the claimant received the disqualifying determination on December 28, 2021, but waited 14 days before she contacted a DUA representative for assistance. *See* Findings of Fact # 5 and 7. The claimant made no attempt to contact a DUA representative to clear up the confusion so that she could timely appeal within the 10-day appeal period. There is also no evidence suggesting any circumstances beyond her control that prevented her from doing so. Mere confusion about the reasons for disqualification is not a circumstance beyond her control. Thus, we conclude the claimant failed to establish good cause for filing her late appeal to the disqualifying determination.

We now address the portion of the review examiner's decision regarding the late appeal determination. The review examiner concluded that, because the claimant failed to establish justification for filing her untimely appeal to the late appeal determination, the claimant was not entitled to a hearing on the merits of the disqualifying determination.¹ Since we have held that the claimant failed to establish good cause for filing her appeal to the disqualifying determination beyond the statutory time frame, the review examiner's decision on the late appeal determination does not change our decision.

We, therefore, conclude as a matter of law that the claimant is not entitled to a hearing on the merits of the disqualifying determination, because she failed to establish good cause for filing a hearing request after the statutory deadline as permitted under G.L. c. 151A, § 39(b), and 430 CMR 4.14.

¹ Even if we were to assume, *arguendo*, that this was the only basis for denying the claimant a hearing on the merits of the disqualifying determination, we would reverse, as there is nothing in the record that indicates the claimant was provided with adequate notice and an opportunity to be heard on the late appeal determination. *See* Board of Review 0078 0983 04 (Mar. 8, 2023).

The review examiner's decision is affirmed. The claimant is not entitled to a hearing on the merits of the disqualifying determination, dated December 28, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 30, 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.

DY/rh