

**The claimant had justification for his late appeal, as the DUA did not send him notice to check his UI Online account for a determination, and upon discovering it, he promptly filed his hearing request.**

**Board of Review  
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**Issue ID: 0075 1274 11**

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's late request for a hearing. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with an effective date of March 22, 2020. On January 28, 2022, the DUA issued a notice of disqualification under G.L. c. 151A, § 39, denying the claimant's late request for a hearing. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's initial determination in a decision rendered on March 17, 2022. We accepted the claimant's application for review.

The claimant's request for a hearing was denied after the review examiner determined that, pursuant to G.L. c. 151A, § 39(b), the claimant did not have justification for filing his appeal past the ten-day deadline. 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 an email 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 an initial unemployment claim effective the week beginning March 22, 2020. The claimant's unemployment application lists employment for the claimant with the 1st employer and the 2nd employer. The 1st employer is an equipment company. The 2<sup>nd</sup> employer is [a] food market.

2. The claimant has elected to receive correspondence from the Department of Unemployment Assistance (hereinafter DUA) by electronic communication.
3. The last week the claimant requested for [sic] unemployment benefits (as of the date of the hearing) was the week ending April 10, 2021.
4. The claimant subsequently returned to work for [the] 1st employer on a full-time basis and stopped requesting unemployment benefits.
5. On September 29, 2021, the claimant reviewed his UI Online Inbox. The claimant reviewed his UI Online Inbox at this time, as the claimant received an e-mail message from the DUA to his personal e-mail account notifying the claimant that he had important information in his UI Online account. Upon reviewing his UI Online inbox, the claimant reviewed a document informing the claimant that he may be eligible for 4 more weeks of unemployment benefits.
6. Within a week of September 29, 2021, the claimant initiated a telephone call to the DUA and spoke with a worker from the DUA. The claimant informed the worker that he had returned to full-time work and inquired about the notice that the claimant received about the 4 additional weeks of unemployment benefits. The DUA worker advised that the claimant could ignore the notification about the additional weeks of unemployment benefits.
7. The claimant subsequently stopped monitoring his UI Online Inbox, as the claimant stopped requesting unemployment benefits in April, 2021 and had already returned to full-time work with the 1st employer.
8. On November 4, 2021, the DUA electronically mailed to the claimant's UI Online Inbox a Notice of Disqualification, Issue Identification Number [XXXX XXXX XX], denying the claimant benefits under Sections 29(a) & 1(r) of the Law commencing the week beginning May 10, 2020, and until he met the requirements of the Law in connection with the 2nd employer's establishment. The claimant received this Notice of Disqualification in his UI Online Inbox.
9. On January 19, 2022, the claimant reviewed his UI Online Inbox. Prior to this date, the claimant had not reviewed his UI Online Inbox since September, 2021.
10. On January 19, 2022, the claimant discovered the Notice of Disqualification that was issued on November 4, 2021, within his UI Online Inbox. This was the first time the claimant was aware of the Notice of Disqualification that was issued on November 4, 2021.
11. In November, 2021, the claimant did not receive an e-mail notification to his personal e-mail account from the DUA regarding his UI Online account. The claimant checked the spam folder of his personal e-mail address and did not

discover any e-mails from the DUA to his personal e-mail account from November, 2021.

12. On January 20, 2022, the claimant appealed the Notice of Disqualification that was issued on November 4, 2021, by U.S. Mail. The appeal request was late.
13. The claimant was late requesting an appeal in response to the Notice of Disqualification that was electronically mailed by the DUA to the claimant's UI Online Inbox on November 4, 2021, because the claimant was not initially aware of the Notice of Disqualification because the claimant stopped monitoring his UI Online Inbox, as he stopped requesting unemployment benefits in April, 2021 and had also returned to full-time work for the 1st employer.
14. On January 28, 2022, the DUA issued a Notice of Disqualification, Issue Identification Number [XXXX XXXX XX], denying the claimant's request for a hearing for the underline [sic] matter due to lateness under Section 39 of the Law. On the Notice of Disqualification, the DUA wrote in part: "Your request for hearing was filed beyond 30 days from the date of the determination," and "It is determined that there is no justification to consider your request for hearing timely." On February 7, 2022, the claimant appealed this Notice of Disqualification.

### 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 have justification for failing to timely file his appeal, as she found that the claimant did not receive an email notification in November, 2021, to check his UI Online account.

In determining whether the claimant is entitled to a late appeal, we look to G.L. c. 151A, § 39(b), which 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 November 4, 2021, notice of disqualification. Since the claimant did not file the appeal until two and one-half 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 a hearing on a late appeal if the appeal is filed within thirty days of issuance of a determination and good cause is shown) with 430 CMR 4.15 (allowing a hearing on a late appeal if the appeal is filed after thirty days and justification is shown). 430 CMR 4.15 provides:

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

- (1) A Division employee directly discouraged the party from timely requesting a hearing and such discouragement results in the party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing;
- (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 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.
- (4) An employer threatened, intimidated or harassed the party or a witness for the party, which resulted in the party's failure to file for a timely hearing.

The review examiner found that, in November, 2021, the claimant did not receive an email from the DUA to his personal email account notifying the claimant that he had important documents in his UI Online Inbox, which required review. Finding of Fact # 11. When he discovered the disqualifying determination in his UI Online inbox on January 19, 2022, he promptly appealed. *See* Findings of Fact ## 10 and 12.

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). Here, because the claimant did not receive a DUA communication to look for the notice of disqualification, he did not receive the requisite notice necessary to timely appeal. As he promptly filed his appeal the next day, he established justification for the late appeal pursuant to 430 CMR 4.15(3).

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 of Issue ID # [XXXX XXXX XX].

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 27, 2022**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

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](http://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.

SVL/rh