

**Although the claimant filed his hearing request in response to a Notice of Disqualification beyond the statutory appeal period, he is entitled to a hearing on the merits of that determination, because he understood a DUA representative's comments that he was "all set" to mean that no further steps were necessary to file a request for a hearing. The claimant established good cause for filing a late appeal pursuant to 430 CMR 4.14(9).**

**Board of Review  
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**Issue ID: 0075 6559 17**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to dismiss his request for 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 reverse.

The claimant filed a claim for unemployment benefits with the DUA, effective January 23, 2022. On February 12, 2022, the DUA issued a Notice of Disqualification in connection with identity verification pursuant to G.L. c. 151A, § 25(a), which he appealed on February 28, 2022. On June 2, 2022, the DUA issued a Notice of Disqualification pursuant to G.L. c. 151A, § 39(b), stating that the claimant did not have good cause for filing a late appeal. The claimant timely appealed this determination. Following a hearing on the G.L. c. 151A, § 39(b) issue, the review examiner affirmed the agency's determination in a decision rendered on August 25, 2022. We accepted the claimant's application for review.

The review examiner concluded that the claimant did not have good cause for failing to timely file an appeal of the February 12, 2022, Notice of Disqualification pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14. Thus, he was not entitled to a hearing on the merits of the underlying determination. 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 good cause for the late appeal of the February 12, 2022, Notice of Disqualification, is supported by substantial and credible evidence and is free from error of law, where the claimant contacted a DUA representative to address his identity verification issue and was told that he was "all set."

### Findings of Fact

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

1. The claimant filed an unemployment claim. Upon filing, the claimant chose to receive correspondence electronically.
2. On February 12, 2022, the Department of Unemployment Assistance (DUA) electronically issued the claimant a Notice of Disqualification for failing to verify his identity (the Notice) to his UI Online inbox.
3. The claimant had made several phone calls to the DUA about his identity documents and in one such exchange he was told that his documents were “all set.”
4. An appeal of the Notice was due by February 22, 2022.
5. The claimant enlisted the assistance of his daughter to manage his claim.
6. The claimant viewed the Notice electronically on or about February 14, 2022.
7. On February 28, 2022, the 16th calendar day following the [first] Notice, the claimant appealed the Notice.
8. On June 2, 2022, the DUA electronically issued the claimant a Notice of Disqualification, pursuant to Section 39 of the Law to his UI Online inbox. That notice stated that the claimant did not have good cause for his late appeal of the Notice.

### 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 establish good cause for filing a late appeal.

Because the claimant did not timely file an appeal of the February 12, 2022, Notice of Disqualification, we must look to the applicable statute and regulations to determine whether the claimant had good cause for being late.

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. . . .

In this case, the claimant filed his appeal 16 days after the DUA issued its determination. Finding of Fact # 7. Corresponding DUA regulations, 430 CMR 4.14, outline certain circumstances that constitute good cause for submitting a late appeal beyond the 10-day filing period within the meaning of G.L. c. 151A, § 39(b):

The Commissioner may extend the ten day filing period where a party establishes to the satisfaction of the Commissioner or authorized representative that circumstances beyond his or her control prevented the filing of a request for a hearing within the prescribed ten day filing period. Examples of good cause for a failure to file a timely request for a hearing include, but are not limited to, the following:

...

(9) A Division employee directly discourages a party from timely requesting a hearing and such discouragement results in a party believing that a hearing is futile or *that no further steps are necessary to file a request for a hearing*. (Emphasis added)

The review examiner found that the claimant had made several phone calls to the DUA about his identity verification documents and, in one such exchange, was told that his documents were “all set.” Finding of Fact # 3. Nonetheless, the review examiner concluded that the claimant failed to provide an explanation for his late appeal submission, reasoning that these communications would have occurred prior to the agency’s issuance of the February 12, 2022, Notice of Disqualification, not during the period in which he should have appealed. We disagree.

The claimant testified that he had contacted DUA prior to receiving the determination. However, the claimant and his wife, who appeared at the hearing as a witness, also testified that they contacted DUA during the 10-day appeal filing period to seek clarification on how to proceed with the determination. Specifically, the claimant and his wife testified that they contacted DUA and spoke with representatives on February 14, 2022, and February 17, 2022. The claimant further testified that he “asked what I needed, and they told me what they needed, and I sent everything in . . . I called within the 16 days and the gentleman on the phone said I was all set.” In response to a subsequent question posed by the review examiner, the claimant again answered, “they told me that I was all set. They told me on the phone that I was all set, and that they got all the information they need.” In addition, the claimant’s wife testified that they asked about “the email” [Notice of Disqualification], and “they led us to believe that everything was fine.”<sup>1</sup> This testimony of the claimant and his wife is consistent with the claimant’s responses to the agency’s Late Appeal Fact-Finding Questionnaire. Exhibit 3.

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<sup>1</sup> While not explicitly incorporated into the review examiner’s findings, this testimony by the claimant and his witness is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

We note that there is also information contained in the agency's UI Online record-keeping system that supports the claimant's assertion that he contacted DUA for assistance on February 17, 2022. On the same date, a DUA call agent placed a note in the claimant's profile, stating that the claimant was looking for checks, and was advised that his "ID cleared on 2/12." Because the claimant received the Notice of Disqualification in connection with his identity verification documentation, and the February 17, 2022, note indicates that a DUA representative told the claimant that this identity verification issue was resolved, it was not unreasonable for the claimant to believe during the appeal period that he needed to take no further steps to appeal the determination.

Under these circumstances, we believe that the reason for the delay in filing the claimant's appeal was caused by the DUA representative's comments that he was "all set," which led the claimant to believe that no further steps were necessary to file a request for a hearing on the February 12, 2022, Notice of Disqualification.

We, therefore, conclude as a matter of law that the claimant's appeal is deemed timely pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14(9).

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the February 12, 2022, Notice of Disqualification.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 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.

JMO/rh