

**The claimant demonstrated that he intended to appeal a disqualifying determination, but inadvertently filed an appeal to a monetary determination. Where the claimant’s appeal to the monetary determination was in error, and it was filed within the 10-day statutory period of the disqualifying determination, the Board deemed the appeal to have been timely filed pursuant to G.L. c. 151A § 39(b).**

**Board of Review  
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**Issue ID: 0076 0395 09**

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 2, 2022. On February 5, 2022, the DUA issued a disqualifying determination denying benefits pursuant to G.L. c. 151A, § 25(e)(1), based on the claimant’s separation from employment (disqualifying determination). The claimant appealed the disqualifying determination on March 25, 2022, forty-eight days after such determination was issued. On April 8, 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 justification for filing a late appeal (late appeal determination). The claimant then requested a hearing on the late appeal determination. Following a hearing, the review examiner affirmed the agency’s late appeal determination in a decision rendered on September 3, 2022.

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 he did not establish justification to file a hearing request 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, as well as the DUA’s electronic record-keeping system, UI Online.

The issue before the Board is whether the review examiner’s decision, which concluded that the claimant failed to establish that there was good cause within the meaning of G.L. c. 151A, § 39(b), to file his appeal late, is supported by substantial and credible evidence and is free from error of law, where the claimant mistakenly appealed the incorrect determination.

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 January 5, 2022. The effective date of the claim was January 2, 2022.
2. On February 5, 2022, the DUA issued a Notice of Disqualification (the Notice) to the claimant stating his leaving work was determined to be voluntary and without good cause attributable to the employing unit under Section 25(e)(1) of the law.
3. The claimant elected to receive correspondence from the DUA electronically.
4. The claimant received the February 5, 2022, Notice when it was properly placed in his UI [Online] inbox.
5. On February 7, 2022, the claimant mistakenly filed an appeal of his Monetary Determination rather than for his Quit issue.
6. On March 24, 2022, the claimant called the DUA [call] center to check [the] status of his claim. It was during this call that he was made aware that he appealed the wrong issue on February 7, 2022.
7. On March 25, 2022, the claimant electronically appealed the February 5, 2022, Notice of Disqualification.
8. On April 8, 2022, the DUA issued the claimant a second Notice of Disqualification, indicating that he did not have justification for his late appeal, having filed it 49 days after it was issued.
9. The claimant did not file his appeal right away because he was confused by the process. Specifically, that he finally filed the right issue, and it still came back that he appealed late.
10. On July 18, 2022, the claimant had his Monetary Determination hearing. At this Hearing, the claimant expressed his confusion with filing an appeal and then having it come up that he filed late. The hearing officer instructed the claimant to call the DUA [call] center for how best to proceed.
11. On July 18, 2022, the claimant called the DUA call center, and was instructed that he needed to file an appeal of his April 8, 2022, Notice. He filed an electronic appeal that same day. His appeal was late, having filed it 101 days after the Notice was issued.
12. The second appeal was late because the claimant was confused by the Notice stating his appeal was late.

## 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 claimant is not entitled to a hearing on the merits of the disqualifying determination.

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. . . .

Here, the findings show that the claimant elected to receive correspondence from the DUA electronically and that he received the disqualifying determination on February 5, 2022. *See* Findings of Fact ## 3 and 4. The reviewer examiner found that, on February 7, 2022, the claimant mistakenly filed an appeal of his monetary determination rather than his disqualifying determination. *See* Finding of Fact # 5. The review examiner further found that the claimant was unaware that he filed his appeal request to the wrong determination until he spoke with a DUA representative on March 24, 2022. *See* Finding of Fact # 6. Upon realizing his error, the claimant filed an appeal of the disqualifying determination the next day, on March 25, 2022. *See* Finding of Fact # 7.

We note that the DUA's electronic database (UI Online), reflects that, on January 15, 2022, the DUA issued a Notice of Monetary Determination (monetary determination) under Issue ID # 0075 3332 23, and that the claimant appealed that monetary determination on February 7, 2022. UI Online further shows that the claimant's appeal of the monetary determination was received more than 10 days after its issuance and was dismissed pursuant to § 39(b). However, on February 8, 2022, the claimant filed a late appeal hearing request on the monetary determination under Issue ID # 0075 3332 25.

Upon review of the late appeal hearing request on the monetary determination, it is evident that the claimant was intending to appeal his disqualifying determination. The claimant specifically stated in the appeal that he was appealing his disqualifying determination and then goes into detail describing his reasons for separation. Moreover, we note that when that appeal was filed on February 8, 2022, it was within the 10-day appeal window for the disqualifying determination.

In short, we believe the findings and the entries in UI Online show that he intended to timely file an appeal of the disqualifying determination issued on February 5, 2022, but mistakenly filed the

appeal in response to the monetary determination. We decline to penalize him for formally appealing the wrong issue.

We, therefore, conclude as a matter of law that that the claimant is deemed to have timely filed his appeal within the statutory deadline pursuant to G.L. c. 151A § 39(b).

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the disqualifying determination, dated February 5, 2022.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 25, 2023**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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.

DY/rh