

**The employer had good cause for its failure to timely respond to the agency’s request for information. Therefore, pursuant to G.L. c. 151A, §§ 38(b) and 38A, the employer shall be a party to future proceedings on the claim, and it may be relieved of charges in the event of any wrongful payment of benefits.**

**Board of Review  
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**Issue ID: 0076 3482 37**

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) denying the employer party status and relief of benefit charges. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits effective March 27, 2022. The agency sent the employer a questionnaire to complete entitled “Notification – Confirmation of Employment.” The deadline to respond to the questionnaire was April 8, 2022. The employer returned the completed questionnaire to the agency on April 12, 2022. The agency determined that the employer’s response to the questionnaire was not timely, and that there was no good cause for the delay in a determination issued on May 5, 2022. The employer appealed and attended the hearing. In a decision rendered on December 10, 2022, the review examiner affirmed the agency’s determination under G.L. c. 151A, § 38(b), and, as a result, the employer was no longer a party to further proceedings and would not be relieved of benefit charges. We accepted the employer’s application for review.

After considering the recorded testimony and evidence from the hearing, the review examiner’s decision, and the employer’s appeal, we remanded the case to the review examiner for subsidiary findings from the record. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner’s decision, which concluded that the employer was no longer a party to further proceedings and would not be relieved of benefit charges, pursuant to G.L. c. 151A, § 38(b), because the employer’s response to a request for information was late, 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 and credibility assessment are set forth below in their entirety:

1. The claimant filed a claim for unemployment benefits effective March 27, 2022.

2. The employer responds to correspondence from the DUA himself. The employer uses his company payroll book to gather information and then fill out and respond to the correspondence. The employer's payroll book shows the dates that employees were employed from, and when they were let go. It also shows the employees' paystubs.
3. The DUA sent the employer a "Notification - Confirmation of Employment" (the confirmation of employment notice) to complete.
4. The confirmation of employment notice was due by April 8, 2022.
5. The employer did not view the confirmation of employment notice when it was issued, because the employer was away on vacation at the time.
6. When the employer returned from vacation, he retrieved his mail from the post office.
7. The employer filled out the confirmation of employment notice using his payroll book.
8. The confirmation of employment notice was completed with sufficient facts to be considered adequate under the law.
9. The employer submitted the confirmation of employment notice to the DUA on or about April 12, 2022.
10. The DUA received the confirmation of employment notice from the employer on or about April 12, 2022.
11. On May 5, 2022, the DUA issued a Notice of Disqualification to the employer regarding the late response to the DUA's request for information via the confirmation of employment notice.
12. The May 5, 2022, Notice of Disqualification cited April 12, 2022, as the date the employer submitted the confirmation of employment notice to the DUA.
13. The employer appealed the May 5, 2022, Notice of Disqualification on May 20, 2022.
14. The June 2, 2022, "date received" notation on the fact-finding summary screen is incorrectly listed as the date the DUA received the confirmation of employment notice from the employer.

Credibility Assessment:

DUA's records contain a discrepancy regarding when it received the employer's response to the confirmation of employment notice. The May 5, 2022, Notice of

Disqualification cites the April 12, 2022, date, while the issue fact-finding summary screen lists a “date received” of June 2, 2022. It is most logical, plausible and believable that the employer submitted the confirmation of employment notice on or about April 12, 2022, causing the creation and subsequent determination of the late response via the May 5, 2022, Notice of Disqualification, allowing the employer to appeal on May 20, 2022. Given that the Notice of Disqualification was issued on May 5, 2022, and the employer appealed on May 20, 2022, it is nonsensical that the employer could have first responded to the confirmation of employment notice in June, 2022, after the issue had been adjudicated and was awaiting a hearing. As a result, it is believable that the June 2, 2022, “date received” is an error, and the April 12, 2022, date received is correct.

### 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 conclusion is free from error of law. Upon such review, the Board adopts the review examiner’s consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner’s credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we reject the review examiner’s legal conclusion that the employer did not have good cause for his failure to timely respond to the agency’s request for information.

G.L. c. 151A, § 38(b), provides, in relevant part, as follows:

Notice of a claim so filed shall be given promptly by the commissioner or his authorized representative to the most recent employing unit of the claimant and to such other employing units as the commissioner may prescribe. If such employing unit has reason to believe that there has been misrepresentation or has other reasons which might affect the allowance of said claim, or has been requested by the commissioner to furnish any other pertinent information relating to said claim, it or he shall return the said notice to the indicated employment office with the reasons or information stated thereon within eight days after receipt, but in no case more than ten days after mailing of said notice, . . . Failure without good cause to return said notice and information within the time provided in this section or prescribed by the commissioner shall bar the employing unit from being a party to further proceedings relating to the allowance of the claim . . . .

Also relevant in this appeal is G.L. c. 151A, § 38A, which provides as follows:

(a) If the director, or the director's authorized representative, determines, after providing written or electronic notice to the employer, that a payment of benefits was made because the employing unit, or an agent of the employing unit, was at fault for failing to respond timely or adequately to any request of the department for information relating to the claim for benefits, then: (i) the employing unit, except for employing units making payments into the Unemployment Compensation Fund under section 14A, shall not be relieved of charges on account

of any such payment of benefits; and (ii) if the employing unit makes payments into the Fund under section 14A, it shall not be relieved from reimbursing the fund on account of any such payment of benefits. For purposes of this subsection, a response shall be considered inadequate if it fails to provide sufficient facts to enable the department to make the proper determination regarding a claim for benefits. A response shall not be considered inadequate if the department fails to ask for all necessary information, except in any case where there has been a failure to respond.

The adequacy of the employer's response to the confirmation of employment notice is not at issue here, as the agency has not determined that the response was inadequate pursuant to G.L. c. 151A, § 38A, and there is nothing in the record to indicate that it was inadequate. The only matter at issue is the timeliness of the employer's response.

G.L. c. 151A, § 38(b), provides that a failure by the employer to timely respond to a request for information by the agency without good cause can result in loss of party status. After remand, the review examiner found that the employment confirmation notice was due by April 8, 2022, and the employer did not respond until April 12, 2022, because he was on vacation at the time the notice was issued and did not return and retrieve his mail from the post office until after the due date had elapsed. *See Consolidated Findings## 4-6 and 9-10.* These consolidated findings establish that the employer had good cause for his failure to timely respond to the agency's request for information, as he was away at the time the notice was issued, and he promptly responded to the agency's request within a few days of learning of the notice. Accordingly, the review examiner erred in barring the employer from being a party to further proceedings.

We, therefore, conclude as a matter of law that pursuant to G.L. c. 151A, §§ 38(b) and 38A, the employer had good cause for its failure to timely respond to the agency's request for information.

The review examiner's decision is reversed. The employer may participate as a party in future proceedings relating to the allowance of this claim, and it may be relieved of charges in the event of any wrongful payment of benefits.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 8, 2023**



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