Where the employer initially asserted that he failed to receive a DUA email notice pertaining to a request for wage information, but, on remand, acknowledged that the email had been received, and was in the junk folder of his personal email account, the Board held that the employer did not establish a good cause reason for failing to timely respond to the agency's request for information, and was appropriately denied party status pursuant to G.L. c. 151A, § 38(a) and (b).

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Issue ID: 0076 3701 39

Introduction and Procedural History of this Appeal

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

The claimant filed a claim for unemployment benefits, effective March 20, 2022. The agency sent the employer a form to complete, entitled "Request for Wage Information." The deadline to complete the form was April 12, 2022. The employer returned the completed form to the agency on April 15, 2022. In a Notice of Disqualification issued on April 16, 2022, the agency determined that the employer's response to the form was not timely and that there was no good cause for the delay. The employer appealed and attended the hearing. In a decision rendered on November 9, 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. 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 to take additional evidence as to whether the employer received notification from DUA concerning the placement of time-sensitive information in his UI Online correspondence inbox. The employer attended the remand hearing. Thereafter, the review examiner issued her 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 pursuant to G.L. c. 151A, § 38(a) and (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 are set forth below in their entirety:

1. On 3/30/22, the claimant, [claimant], filed a new claim for benefits listing the instant employer as her most recent employer.

2. A "Request for Wage Information" notice was sent to the employer's UI online inbox electronically on or about 3/31/22. It was due back by 4/12/22. The claimant [sic] was sent an email to his personal email address on 4/1/22 regarding the request for wage information. The email went into the claimant's [sic] junk inbox for his personal email. The employer usually does not check his junk inbox.

3. The employer elected to receive DUA correspondence electronically. The employer has always utilized this correspondence method. The employer has not recently changed its preferred correspondence method.

4. The employer checks his UI online inbox only when he receives an email from the DUA. He does not have time to continually look in his UI online inbox and maintain his DUA account as he works full time and has three stores to run.

5. The employer received an email on or about 4/15/22 indicating a document in his UI online account. The DUA issued a non-monetary determination at that time. This email prompted the employer to look in his UI online inbox where he found the 3/31/22 request for wage information form.

6. The employer completed the request for information form and submitted it to the department on 4/15/22.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact, except as follows. Consolidated Finding # 1 is unsupported by the record to the extent it states the claimant listed the instant employer as her most recent employer. Remand Exhibit # 2, the claimant's unemployment application, shows that she most recently worked for a different employer from May 6, 2021, until March 30, 2022, and that she worked for the instant employer from February 24, 2021, until May 2, 2021.[1] Although the statements that comprise Consolidated Finding # 2 are supported by the record, the review examiner erroneously referred to the claimant instead of the employer in two instances. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we affirm 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.

[1] We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

Two sections of the unemployment statute actually require the employer to timely respond to DUA's request for information. G.L. c. 151A, § 38, provides, in relevant part, as follows:

> (a) Benefit claims shall be filed at the employment office at which the claimant has registered as unemployed. The commissioner shall prescribe the form, the time, and the manner in which such claims, other than disputed claims, shall be filed. The commissioner shall also prescribe the form and manner in which reports on claims required from the claimant and the employing units shall be presented . . . . Such procedure shall be designed to ascertain the substantive rights of the parties involved, without regard to common law or statutory rules of evidence and other technical rules of procedure.
>
> For the purpose of this section, the commissioner shall notify so many of the claimant's base period employers to report wages paid such individual during the base period as he finds necessary to make a proper determination on said claim. Each employer shall thereupon promptly report to the commissioner, in such form and manner as the commissioner prescribes, such information as may be necessary to determine a claimant's benefit rights under this chapter. If an employer fails to respond to the commissioner's notice under this section within ten days after such notice was mailed to him, the commissioner shall promptly determine the matter based on the available information. *If an employer fails to respond to the commissioner's notice under this subsection without good cause the employer shall have no standing to contest such determination*, and any benefits paid pursuant to such a determination shall remain charged to the employer's account . . . .
>
> (b) 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 . . . .*

(Emphasis added.)

G.L. c. 151A, § 38A, provides, in relevant part, 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 request for wage information 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(a) and (b), provide that a failure by the employer to timely respond to DUA requests for information without good cause can result in loss of party status. In its Board appeal, the employer asserted that he did not receive a DUA email notification prompt at any time around March 31, 2022, the date the request for wage information was placed in his inbox. However, the employer's narrative changed significantly during the remand hearing. With respect to the DUA email notification prompt regarding the request for wage information, the employer testified, "I could have missed, I'm not saying I'm 100% sure . . . I might have missed something, it's passed, so I can't exactly remember," before he viewed the junk folder in his personal email account and verbally confirmed the presence of three separate DUA email notification prompts, each dated April 1, 2022.[2]

Consequently, after remand, the review examiner found that the wage request form was due by April 12, 2022, and the employer did not respond until April 15, 2022. *See* Consolidated Finding # 2. The review examiner also found that the employer was sent an email to his personal email address on April 1, 2022, regarding the request for wage information, but that it went into the account's junk inbox, and he usually does not check his junk inbox. *Id.* The review examiner further found that the employer elected to receive DUA correspondence electronically and has always utilized this correspondence method. Consolidated Finding # 3.

In recent Board decisions where good cause has been found for late filings, it was either unknown whether the DUA email notification prompt went to a recipient's spam or junk folder, or there were explicit findings that no DUA email had been delivered at all. *See* Board of Review Decision 0080 4835 36 (Nov. 20, 2023) (good cause for late appeal where claimant had monitored email and spam folders, but did not receive a DUA email in her personal email account); and Board of Review Decision 0075 1274 11 (May 27, 2022) (good cause for late appeal, where claimant did not receive email notification to personal account or to his spam folder).

In this case, the employer provided unrefuted testimony that the DUA email notification prompt for the request for wage information had been delivered to his correct email address, even though it inexplicably went into his junk folder. The consolidated findings establish that the employer did

[2] This testimony is also part of the unchallenged evidence in the record.

not have good cause for his failure to timely respond to the agency's request for information, as the DUA duly issued the email notification prompt to the employer's email address of record, but the employer did not view it before April 12, 2022, due to a failure to monitor his junk folder's inbox. The failure to monitor a spam or junk email folder does not show that the employer did not receive DUA's email notice or that the employer was unable to receive it. Accordingly, the review examiner appropriately barred 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(a), (b), and 38A, the employer did not establish a good cause reason for its failure to timely respond to the agency's request for information.

The review examiner's decision is affirmed. The employer may not participate as a party in future proceedings relating to the allowance of this claim.[3]

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 28, 2024

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

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

[3] We note that, according to the UI Online record-keeping database, the claimant requested benefits for two weeks only – for the weeks beginning April 3, 2022, and April 10, 2022. To date, the employer has not been charged any benefit payments in connection with this claim.