Although the claimant received the disqualifying determination, he failed to timely file his hearing request because he was ignoring communications from the DUA and not checking his UI Online account after he returned to work. Because failure to timely file an appeal due to returning to work is not an allowable reason under 430 CMR 4.15 to file an appeal after the statutory deadline under G.L. c. 151A, § 39(b), held the claimant was not entitled to a hearing on the merits of the underlying disqualifying determination.

Board of Review
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Issue ID: 0077 0685 10

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 a hearing on the merits of a disqualifying determination. A hearing on the merits was denied on the ground that the claimant did not establish good cause to file a hearing request after the statutory deadline pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14.–4.15.

The claimant had filed a claim for unemployment benefits, effective August 15, 2021. On September 20, 2021, the DUA issued a disqualifying determination denying benefits pursuant to G.L. c. 151A, § 25(a), based on the claimant's failure to complete an Initial RESEA requirement (disqualifying determination). The claimant appealed the disqualifying determination on June 3, 2022, which was 256 days after such determination was issued. On June 4, 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 appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency's late appeal determination in a decision rendered on July 30, 2022. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On January 12, 2023, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning whether the claimant received an email notification that he should view his UI Online Inbox for the disqualifying determination. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact.

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 evidence establishes that the DUA notified the claimant to check his UI Online Inbox for the disqualifying determination.

After reviewing the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we affirm the review examiner's decision.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant filed a claim for unemployment benefits effective August 15, 2021. The claimant elected to receive electronic correspondence from the Department of Unemployment Assistance (DUA).

2. On September 20, 2021, the DUA issued the claimant a Notice of Disqualification (the Notice) in issue ID # 0072 9585 79-01, stating that the claimant did not attend the UI RESEA seminar as required.

3. The Notice was sent to the claimant along with appeal instructions. The directions stated that an appeal form must be submitted within 10 calendar days after the date of issuance of the Notice.

4. The claimant has attended a RESEA seminar prior to 2021.

5. The claimant returned to work on or about September 13, 2021.

6. The claimant received an email notification sent to his personal email address from the DUA on September 19, 2021. The DUA's benefit correspondence screen in UI online confirms the DUA sent a notification by email.

7. The Notice was also placed in the claimant's UI online inbox.

8. The claimant also receives emails from the DUA which contain the multi-factor authentication link that is required to sign into his UI online account.

9. The claimant did not appeal the Notice timely because he ignored communications from the DUA regarding his UI benefits once he returned to work in September, 2021.

10. The claimant appealed the Notice on June 3, 2022, 256 days after the Notice was issued.

Credibility Assessment:

The claimant freely testified that he stops paying attention to his UI benefits once he returns to work and is no longer claiming UI benefits. Because of this, I reject

the claimant's testimony that he did not receive an email from the DUA notifying him to check his UI online account.

The claimant's contention that the only way he could receive communications from the DUA was to go into UI online and print the Notice is not credible. The claimant receives the emails from the DUA which contain the multi-factor authentication link required to sign into his account. I reject his contentions that he did not receive emails from the DUA instructing him to check his UI online inbox for correspondence. It is illogical that the claimant would receive one type of email communication from the DUA, but not another. It is more likely that he disregarded emails from the DUA regarding his account based on his own admission that he does not pay attention to his UI benefits when he is no longer receiving them.

The DUA's own record keeping system, UI online, shows an email was sent to the claimant regarding the September, 2021 Notice. The claimant's self-serving statements that he did not receive the email are refuted by DUA records.

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. 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.

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. . . .

The claimant filed a request for a hearing 256 days after the disqualifying determination was issued. Consolidated Finding # 10. We consider 430 CMR 4.15, which provides that the 30-day filing deadline shall not apply if the claimant can meet one of the listed criteria. This regulation states, in pertinent part:

> 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 issues;
(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.

Because there is nothing in the record to suggest that a DUA employee discouraged the claimant from timely filing his appeal, nor any evidence to suggest an employer threatened or harassed the claimant, which resulted in his failure to file his appeal timely, we narrow our analysis to subsections (2) and (3) of 430 CMR 4.15.

Here, the claimant elected to receive electronic correspondence from the DUA, and the disqualifying determination was placed in his UI Online inbox when it was issued on September 20, 2021. Consolidated Findings ## 1–2 and 7. Since the claimant elected correspondence by email, the disqualifying determination is deemed received on the date the correspondence was placed in his UI Online inbox. In this instance, the claimant timely received the determination on September 20, 2021.

The findings reflect that the DUA sent the claimant an email notifying him to check his UI Online Inbox for the disqualifying determination on September 19, 2021. Consolidated Finding # 6. However, the claimant ignored communications from the DUA and failed to check his UI Online account once he returned to work on or about September 13, 2021, and, thus, he was unaware of the disqualifying determination until 2022, when he re-opened his claim. Consolidated Findings ## 5 and 9–10. Nothing in the record indicates that the claimant was prevented from accessing his account, or that there were circumstances hindering his ability to contact a DUA representative to assist him in filing his appeal within the statutory period. The claimant was simply not checking his account when receiving DUA notifications that correspondence was available to view.

Under 430 CMR 4.15, a claimant can file an appeal beyond 30 days only in limited circumstances. Returning to work is not listed as one of the reasons. Thus, we conclude that the claimant failed to establish good cause for filing his late appeal of the disqualifying determination.

We, therefore, conclude as a matter of law that the claimant is not entitled to a hearing on the merits of the disqualifying determination, because he did not meet any of the allowable criteria for filing a hearing request after the statutory deadline as permitted under G.L. c. 151A, § 39(b), or 430 CMR 4.15.

The review examiner's decision is affirmed. The claimant is not entitled to a hearing on the merits of the disqualifying determination in Issue ID # 0072 9585 79, dated September 20, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 27, 2024

Charlene A. Stawicki, Esq.
Member

Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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

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