

The claimant demonstrated that she intended to file an appeal of the disqualifying determination, but inadvertently attached the appeal to a monetary determination. Where the appeal to the monetary determination was timely filed, but in error, the Board deemed the appeal to have been timely pursuant to G.L. c. 151A § 39(b).

**Board of Review
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Issue ID: 0077 3641 43

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's late request for a hearing. The claimant's request for a hearing was denied on the ground that the claimant failed to show good cause for filing her appeal beyond the statutory deadline. 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 April 24, 2022. On May 21, 2022, the DUA issued a disqualifying determination denying benefits pursuant to G.L. c. 151A, § 25(e)(2), based on the claimant's discharge from employment (disqualifying determination). The claimant appealed the disqualifying determination on June 28, 2022, thirty-eight days after such determination was issued. On June 29, 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, attended by the claimant, the review examiner affirmed the agency's late appeal determination in a decision rendered on July 30, 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 she 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 justification within the meaning of G.L. c. 151A, § 39(b), to file her 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 which was determined to be effective April 24, 2022.
2. The claimant elected to receive her correspondence from the Department of Unemployment Assistance (DUA) via U.S. Mail on her Unemployment Insurance Online (UIO) profile.
3. On May 21, 2022, the DUA issued the claimant a Notice of Disqualification (the Notice) in issue ID 0076 5605 22-02. The Notice indicates that an appeal must be filed within 30 days.
4. On May 21, 2022, the claimant read the Notice but chose not to file an [appeal] because she believed the determination was final.
5. In late June, the claimant went to the Worcester unemployment office and was told by a representative that she could and should file an appeal on the Notice.
6. No one discouraged the claimant from filing an appeal to the Notice.
7. On June 28, 2022, 38 days after the initial determination, the claimant filed an appeal regarding the Notice on the UIO website.
8. On June 29, 2022, the DUA issued the claimant a Notice of Disqualification indicating that her appeal request was received on June 28, 2022, the 38th day after such determination was issued, and it was determined that her reasons for not filing within 30 days did not constitute justification.
9. On June 30, 2022, the claimant appealed the June 29, 2022, Notice of Disqualification.

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 review examiner found that the claimant elected to receive correspondence from the DUA by regular mail, and that the claimant had indeed received and read the disqualifying determination. *See* Findings of Fact ## 1, 2, and 3. The review examiner further found that even though the claimant read the disqualifying determination, she did not file a timely appeal because she believed it was the DUA's final decision and that the issue was not appealable. *See* Finding of Fact # 4. However, the record reflects an additional reason for the claimant's failure to timely file an appeal.

During the hearing, the claimant testified that she contacted the DUA on or about the middle of June 2022, to inform them that she inadvertently filed an appeal to her monetary issue when she intended to file an appeal to her disqualifying determination.¹ We note that the DUA's electronic database (UI Online), reflects that, on May 23, 2022, the DUA issued a Notice of Monetary Determination (monetary determination) under Issue ID# 0077 1331 3192, and that the claimant appealed that monetary determination on June 2, 2022. UI Online further shows that the claimant spoke with a DUA representative twice on June 15, 2022, and the notes corroborate her testimony.

Upon review of the monetary determination hearing request, it appears that the claimant intended to file an appeal of the disqualifying determination. She received two consecutive determinations on May 21 and 23, 2022. Attached to her monetary hearing request was a copy of the disqualifying determination. We can reasonably infer that the claimant intended to appeal the disqualifying determination by attaching a copy of it to the appeal form. Moreover, we note that, when that appeal was filed on June 2, 2022, it was within the 10-day appeal window for the monetary determination.

In short, we believe the findings, the claimant's testimony, and the entries in UI Online show that she intended to file an appeal of the disqualifying determination issued on May 21, 2022, but mistakenly filed the appeal in response to the monetary determination. We decline to penalize her for formally appealing the wrong issue.

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

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).

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the disqualifying determination dated May 21, 2022.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 13, 2023



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.

DY/rh