

The Board concluded that the claimant mailed his request for a hearing within 10 days after the issuance of the Notice of Disqualification. Even though the envelope did not have a postmark, his appeal was received via U.S. mail from California on the 11th day. Held his appeal was timely under G.L. c. 151A § 39(b) and 430 CMR 4.13(3).

**Board of Review
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Issue ID: 0077 5504 18

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), which concluded that the claimant did not have good cause for failing to timely request a hearing on a determination issued on July 1, 2022. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for benefits with the DUA effective November 7, 2021. On July 1, 2022, the DUA issued a Notice of Disqualification based upon his separation from employment (separation determination), which the claimant appealed on July 12, 2022. On July 16, 2022, the DUA issued a Notice of Disqualification stating there was no good cause to consider his request for a hearing on the separation determination, because he submitted his request for a hearing beyond the statutory 10-day deadline (late appeal determination). Following a hearing on the late appeal determination, the review examiner affirmed the agency's initial determination in a decision dated November 5, 2022. The claimant appealed the review examiner's decision, and the Board accepted the claimant's application for review.

A hearing on the separation determination, was denied after the review examiner concluded that the claimant had not shown good cause for the late appeal pursuant to G.L. c. 151A, § 39(b). 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.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not have good cause for failing to timely request a hearing on the separation determination, is supported by substantial and credible evidence and is free from error of law.

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) with an effective date of November 7, 2021.

2. The claimant elected to receive correspondence from the DUA via email.
3. On July 1, 2022, the claimant received a Notice of Disqualification (the Notice) citing Massachusetts General Law Chapter 151A, § 25(e)(2).
4. On July 1, 2022, the claimant received an email notification regarding time sensitive information in his UI Online account.
5. The claimant viewed the Notice when it was issued.
6. The Notice contained appeal instructions and an appeal form.
7. At the time the Notice was issued, the claimant had moved to California.
8. The claimant sent his appeal to the DUA via U.S. postal mail.
9. The claimant sent the appeal from the UPS store in [City], California.
10. At no point did a representative discourage the claimant from appealing the Notice.
11. On July 12, 2022, the DUA received the claimant's appeal of the Notice. The claimant's request for appeal was received 11 days after the determination [sic] issued.
12. On July 16, 2022, the DUA issued the claimant a Notice of Disqualification citing Massachusetts General Law Chapter 151A, § 39 denying the late appeal, which the claimant appealed on September 14, 2022, which was 60 days after the second Notice was issued.

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. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portion of Finding of Fact # 9 which says that the claimant submitted his appeal through UPS, an abbreviation for the United Parcel Service. Because the record shows two U.S. postage stamps on the mailing envelope, this indicates it was mailed via the U.S. Postal Service. We also reject Finding of Fact # 12, because the record shows that the claimant submitted his appeal of the late appeal determination on July 19, 2022, not September 14, 2022. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant did not have good cause for his late appeal.

The unemployment statute sets forth a time limit for requesting a hearing. G.L. c. 151A, § 39(b), provides:

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 DUA regulation at 430 CMR 4.13(3) specifies when a request for a hearing submitted via U.S. mail is considered timely under G.L. c. 151A § 39(b). Specifically, it provides:

A request for a hearing shall be deemed filed on the date it is received, if delivered in hand to a Division employee designated to receive such request, or on the date postmarked, if mailed. A request is timely if it is delivered to the Division or postmarked on or before the tenth calendar day after the date of mailing or date of delivery, in hand, of the Commissioner's determination.

The separation determination was issued to the claimant on July 1, 2022, and he submitted his appeal via U.S. mail. Findings of Fact ## 3 and 8. His appeal was mailed from California and was received by the DUA on July 12, 2022. Findings of Fact ## 9 and 11. When appeals are filed via U.S. mail, the DUA can normally verify the filing date by viewing the postmark date on the envelope. In this case, the envelope contains no postmark date from the U.S. Postal Service.¹ However, it was stamped received by the DUA hearings department July 12, 2022, the 11th day after the Notice of Disqualification date. We can reasonably infer that the claimant mailed it from California before that date, thus, filing his request for a hearing within 10 days. We also note that the claimant's appeal of the late appeal determination issued on July 16, 2022, was appealed timely on July 19, 2022.

Under these circumstances, the claimant met the statutory deadline for filing his appeal within 10 days after the determination date, and a hearing on the separation determination will be granted.

We, therefore, conclude as a matter of law that the claimant's request for a hearing was timely filed under G.L. c. 151A, § 39(b) and 430 CMR 4.13(3).

¹ The absence of a U.S. postal service postmark date on the envelope, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. 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 the separation determination.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 14, 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

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.

MR/rh