

**Because claimant did not receive the email notifying him of new correspondence in his UI online inbox, he did not receive sufficient notice of the determination within the meaning of the Due Process Clause. As the claimant filed an appeal immediately upon learning about the determination, he articulated justification for failing to file a timely appeal within the meaning of 430 CMR 4.15(3).**

**Board of Review  
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Member  
Michael J. Albano  
Member**

**Issue ID: 0078 0045 79**

### 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 in connection with a determination to deny benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On April 12, 2022, the DUA issued to the claimant a Notice of Disqualification stating that the claimant was not eligible for benefits because it was determined the claimant left work voluntarily and without good cause attributable to the employer. The claimant appealed the determination on August 10, 2022, 120 days after the Notice was issued. On August 13, 2022, DUA issued a Notice of Disqualification stating that the claimant did not have good cause for submitting his appeal after the statutory deadline. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on September 9, 2022. We accepted the claimant's application for review.

The appeal was dismissed after the review examiner determined that the claimant had not shown justification for the late appeal pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.15. 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 or justification for failing to file a timely appeal because he was not closely monitoring his UI Online inbox at the time the determination was issued, 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 on 01/06/22, effective 01/02/22.

2. The claimant chose to receive correspondence from the Department of Unemployment Assistance (DUA) electronically.
3. On 01/18/22, the claimant began working fulltime and was no longer requesting unemployment benefits.
4. On 04/12/22, the DUA sent the claimant a Notice of Disqualification regarding his separation from employment under Section 25(e)(1) of the law.
5. The claimant received the Notice of Disqualification when it was placed in his UI Online inbox.
6. The claimant was not aware of the Notice at this time because he never received an email notification informing him he had new correspondence in his UI Online inbox that required his attention.
7. On 07/06/22, the claimant was laid off from his new employment and began requesting benefits again. It was not until he had not received payments for weeks that he thought to call the DUA.
8. On 08/10/22, the claimant called the DUA call center. The representative made him aware of his 04/12/22 Notice and that he needed to file a late appeal.
9. On 08/10/22, the claimant filed an electronic appeal of the 04/12/22 Notice of Disqualification.
10. On 08/13/22, the claimant was sent a second Notice of Disqualification stating he did not have justification for not filing an appeal within 10 days of the 04/12/22 Notice of Disqualification, having filed his appeal on 08/10/22 which was 120 days after the issuance of the Notice of Disqualification.
11. On 08/13/22, the claimant filed an electronic appeal of the 08/13/22 Notice of Disqualification. The appeal was timely.

### 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 of fact 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 findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant did not articulate good cause or justification for failing to file a timely appeal.

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 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 relevant DUA regulation, 430 CMR 4.15, provides in relevant part, as follows:

The 30 day limitation on filing a request for a hearing shall not apply where the party establishes that: . . . (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 a 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 issued. . . .

The review examiner concluded that the claimant was not entitled to a hearing on the merits of the April 12<sup>th</sup> Notice of Determination because he was not closely monitoring his UI Online inbox after returning to work. *See* Finding of Fact # 3. While we agree that claimants are obligated to make all reasonable efforts to monitor the status of their claim for benefits, a claimant's right to receive notice and an opportunity to be heard is a fundamental right.

The Due Process Clause of the Fourteenth Amendment prohibits the States from depriving any person of property without "notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (further citations omitted). The claimant selected electronic correspondence as his communication preference but did not receive an email from the DUA informing him that important documents relevant to his claim had been placed in his UI online inbox. Findings of Fact ## 2 and 6. Therefore, we believe that he did not receive the requisite notice necessary to file a timely appeal. *See* Board of Review Decision 0055 8011 26 (Mar. 29, 2021).

The claimant promptly submitted his appeal upon reopening his claim and learning that there was a pending issue impacting his eligibility for benefits. *See* Findings of Fact ## 7–9. Thus, he had justification for his late appeal pursuant to 430 CMR 4.15(3).

We, therefore, conclude as a matter of law that the claimant established justification for filing his appeal beyond the statutory appeal period pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.15.

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of Issue ID # 0078 0045 79.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 27, 2022**



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](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.

LSW/rh