

The claimant had good cause for his late appeal pursuant to G.L. c. 151A, § 39(b), as he appealed promptly after receiving the determination notice, which was late arriving to the claimant because the USPS delivered it to the wrong address.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0078 0182 50

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 establish good cause for filing his appeal past the ten-day deadline pursuant to G.L. c. 151A, § 39(b). We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with an effective date of June 26, 2022. On July 21, 2022, the DUA issued a notice of disqualification denying benefits because he left his employment without good cause attributable to the employer (Quit determination). The claimant appealed the Quit determination on August 9, 2022. Subsequently, on August 31, 2022, the DUA issued a notice of disqualification under G.L. c. 151A, § 39(b), denying the claimant's late request for a hearing on the Quit determination (Late Appeal determination). The claimant timely appealed the Late Appeal determination to the DUA hearings department. Following a hearing on the Late Appeal determination attended by the claimant, the review examiner affirmed the agency's initial determination in a decision rendered on October 26, 2022. We accepted the claimant's application for review.

The claimant's request for a hearing on the Quit determination was denied after the review examiner determined that, pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14–4.15, the claimant did not have good cause for filing his appeal past the ten-day deadline. Thus, he was not entitled to a hearing on the merits of this Quit determination. 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 filing his appeal past the ten-day deadline, is supported by substantial and credible evidence and is free from error of law, where the review examiner found that the notice of disqualification was mistakenly delivered to the claimant's neighbor, and the claimant filed an appeal a few days after receiving the notice from his neighbor.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant filed an unemployment claim.
2. On July 21, 2022, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Disqualification (the Notice).
3. An appeal of the Notice was due by August 1, 2022.
4. The Notice was delivered to the incorrect mailbox in the claimant's apartment building. A neighbor gave the Notice to the claimant a few days before the latter filed an appeal. The claimant was preoccupied with several personal matters, including taking care of his mother.
5. On August 9, 2022, the 19th day after the Notice, the claimant filed an appeal of the Notice.

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 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 reject the review examiner's legal conclusion that the claimant did not have good cause for failing to timely file his 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 . . . (Emphasis added.)

Also relevant in this case is the DUA regulation, 430 CMR 4.14, which provides, in relevant part, as follows:

The Commissioner may extend the ten day filing period where a party establishes to the satisfaction of the Commissioner or authorized representative that circumstances beyond his or her control prevented the filing of a request for a hearing within the prescribed ten day filing period . . . Examples of good cause for a failure to file a timely request for a hearing include, but are not limited to, the following: (1) A delay by the United States Postal Service in delivering the Commissioner's determination . . . (12) Any . . . circumstances beyond a party's control which prevented the filing of a timely appeal. . . .

Pursuant to G.L. c. 151A, § 39(b), the claimant had ten days to appeal the July 21, 2022, Quit determination. *See* Findings of Fact ## 2–3. The claimant was unable to file an appeal by the ten-day deadline because he did not receive the notice of the determination during the filing period. *See* Finding # 4. He received the notice a few days prior to filing an appeal on August 9, 2022. The review examiner concluded that the claimant did not have good cause for his failure to file a timely appeal, as he did not immediately file upon receiving the notice. We disagree.

The Quit determination was late arriving to the claimant because a mail carrier for the United States Postal Service mistakenly delivered it to the claimant's neighbor. *See* Finding of Fact # 4. The notice of this determination was further delayed because the claimant's neighbor did not give the document to the claimant until on or about August 7, 2022. *See* Finding of Fact # 4. Both of these circumstances were completely outside of the claimant's control and gave him good cause for filing a late appeal under the above DUA regulation. In our view, filing a few days later was not an unreasonable delay on the claimant's part.

We, therefore, conclude as a matter of law that the claimant established good cause pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14 for filing an appeal beyond the statutory appeal deadline.

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the Quit determination, Issue ID # 0077 3685 20.



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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