

The claimant had good cause for her late appeal pursuant to G.L. c. 151A, § 39(b). Because the DUA did not send her an email to check her UI Online account for an important notice, she did not receive sufficient notice of the determination within the meaning of the Due Process Clause. Once she learned of the determination, she filed her hearing requests promptly.

**Board of Review
100 Cambridge Street, Suite 400
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 3722 13

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. 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 July 17, 2022. On September 6, 2022, the DUA issued a determination informing the claimant that she is not entitled to receive benefits for the week beginning August 28, 2022, pursuant to G.L. c. 151A, § 25(a), due to her failure to meet her Reemployment Services Eligibility Assessment (RESEA) requirements (RESEA determination). On October 3, 2022, the claimant submitted her appeal of the RESEA determination. On December 16, 2022, the DUA issued a determination under G.L. c. 151A, § 39(b), denying the claimant's late request for a hearing (late appeal determination). The claimant appealed the late appeal determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's late appeal determination in a decision rendered on April 28, 2023. We accepted the claimant's application for review.

The claimant's request for a hearing on the RESEA determination was denied after the review examiner determined that, pursuant to G.L. c. 151A, § 39(b), the claimant did not have good cause for filing her appeal past the ten-day deadline. 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 her appeal 28 days after the determination date, is supported by substantial and credible evidence and is free from error of law, where the review examiner found that the claimant did not receive an email from the agency instructing her to check her UI Online account.

Findings of Fact

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

1. The claimant filed an unemployment insurance (UI) claim with the Department of Unemployment Assistance (DUA) with an effective date of 7/17/2022 and elected to receive correspondence electronically from the DUA. The correspondence preference was revised on 3/8/2023 to receive information from the DUA via U.S. Postal Service.
2. On 9/6/2022, the DUA issued a Notice of Disqualification (Notice) informing the claimant that she is not entitled to receive benefits for the week beginning 8/28/2022 pursuant to Massachusetts General Law Chapter 151A, § 25(a).
3. The Notice was received by the claimant [sic] 9/6/2022 when it was properly placed in the claimant's UI online account.
4. The Notice contained an appeal request form with instructions for timely requesting a hearing to appeal the Notice determination.
5. On 10/3/2022, twenty-eight (28) calendar days after the Notice posted to the claimant's account, the claimant submitted her appeal request of the Notice via U.S. Postal Service.
6. The claimant's appeal was late because she was not aware that electronic correspondence was chosen for her claim and did not receive a correspondence Notification when the Notice was placed in her UI online account inbox.
7. No one discouraged the claimant from filing an appeal of the Notice.
8. On 12/16/2022, the DUA sent the claimant a Notice of Disqualification under MGL Chapter 151A, § 39 informing the claimant that her appeal of the Notice was received beyond ten days from the Notice date and within eleven (11) to thirty (30) days of the determination without a good cause justification to consider the request for a hearing timely, and, therefore, the request for a hearing on the merits of the case is denied. The claimant appealed this 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 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 her 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. . . .

Pursuant to G.L. c. 151A, § 39(b), the claimant had ten days to appeal the September 6, 2022, RESEA determination. Because the claimant filed the appeal 28 days after the determination date, we consider whether there is good cause for the late appeal.

The review examiner found that the claimant did not receive an email from the DUA to her personal email account notifying the claimant that she had important documents in her UI Online Inbox, which required review. *See* Finding of Fact # 6.

The 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 providing notice and an opportunity to be heard. Dusenbery v. United States, 534 U.S. 161, 167 (2002). Specifically, it requires “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). Here, because the claimant did not receive a DUA communication to look for the disqualifying RESEA determination, she did not receive the requisite notice necessary to timely appeal.

The claimant testified that she did not become aware of the RESEA determination until she called in to the DUA and was told that she had to file her appeal. When the claimant told the DUA representative that she corresponded by mail and did not have a computer or printer but had access to them at the local library, the representative told her to go to the library, print out the appeal form, complete it and mail it back. The claimant testified that she did this, then completed and mailed the appeal on the same day that she went to the library.¹ Given her prompt appeal upon learning of the disqualifying RESEA determination, we are satisfied that the only reason she did not appeal sooner was the lack of notice.

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


The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the RESEA determination in Issue ID # 0078 1748 20.

¹ We consider the review examiner's failure to mention this testimony to be an oversight, as nothing in the decision indicates that he did not find it to be credible. Because this portion of the claimant's testimony is part of the unchallenged evidence introduced at the hearing and placed in the record, it is 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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 26, 2024



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.

PGS/rh