

**Where the claimant established good cause for her late appeal of a determination disqualifying her under G.L. c. 151A, § 25(e)(2), she was entitled to a hearing on the merits on that disqualification despite filing a late appeal of the DUA's intervening disqualification under G.L. c. 151A, § 39(b). The review examiner had no authority to rule on the timeliness of the § 39(b) determination.**

**Board of Review  
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**Issue ID: 0078 5642 44**

#### 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 October 22, 2022, the DUA issued the claimant a Notice of Disqualification (October 22<sup>nd</sup> Notice) disqualifying her from benefits under G.L. c. 151A, § 25(e)(2). The claimant appealed the determination via U.S. Mail, it was postmarked November 4, 2022, and it was received by the DUA on November 7, 2023. On April 26, 2023, the DUA issued a Notice of Disqualification (April 26<sup>th</sup> Notice), stating that the claimant did not have good cause for submitting her appeal after the statutory deadline. The claimant appealed the April 26<sup>th</sup> Notice on October 6, 2023. Following a hearing on the merits, the review examiner affirmed the agency's April 26, 2023, determination in a decision rendered on December 5, 2023. We accepted the claimant's application for review.

A hearing on the merits of the October 22<sup>nd</sup> Notice was denied after the review examiner determined that, while the claimant established good cause for her late appeal of the October 22<sup>nd</sup> Notice, she had not met the criteria to establish justification for her late appeal of the April 26<sup>th</sup> Notice 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 was not entitled to a hearing on the merits of the October 22<sup>nd</sup> Notice even though she established good cause for her late appeal of that determination, because she did not meet the criteria to appeal the April 26<sup>th</sup> Notice beyond 30 days of the date it 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. On October 5, 2022, the claimant filed a claim for unemployment insurance (UI) benefits with the Department of Unemployment Assistance (DUA) effective October 2, 2022.
2. The claimant elected to receive electronic correspondence from the DUA. The claimant provided the DUA with her correct email address.
3. In her initial application for benefits, the claimant selected “English” as her preferred service language.
4. The claimant does not speak English as her first language.
5. The claimant speaks Spanish as her first language.
6. On October 22, 2022, the DUA issued the claimant a Notice of Disqualification (the first notice) in issue ID #0078 3681 81-01 disqualifying her from receiving benefits because she was “discharged because of a knowing violation of a uniformly enforced company rule or policy.”
7. The first notice stated:

This determination will become final unless:

- 1.) You request a hearing within ten calendar days after the date of mailing, or
- 2.) You request a hearing within eleven to thirty calendar days after the date of mailing and it is established that such delay was for good cause.

In limited circumstances, you may request a hearing after thirty calendar days.  
[sic]

If you did not receive the determination in your primary language, the determination will become final unless:

- 1.) You request a hearing within 60 calendar days after the date of mailing, or
- 2.) You request a hearing after 60 days and the reason for the delay is because you did not receive the determination in your primary language.

8. On October 22, 2022, the claimant received the first notice when it was delivered to her UI Online inbox.
9. When the first notice was posted on the claimant’s UI online account, the claimant received an email notifying her that the first notice had been posted on her UI online account.
10. When the first notice was posted, the claimant did not appeal it within the deadline because the first notice was in English. The claimant waited for her daughter to read and interpret it for her.

11. On November 4, 2022es [sic], 13 days after its determination, the claimant submitted an online appeal to the first notice.
12. On April 26, 2023, the DUA issued the claimant a Notice of Disqualification (the second notice) in issue ID #0078 5642 44-01 and determined that there is no justification for the late filing of the first notice's appeal.
13. The second notice stated:

“The enclosed notice contains important information about why you are disqualified from receiving unemployment insurance benefits and how to appeal. You should have it translated immediately. If you need help translating it or have questions, please call the Multilingual Services Unit. If you want to appeal, you must request a hearing. The filing deadline is 10 calendar days after the notice's mailing; 30 calendar days with good cause for the delay; or, in some cases, 60 calendar days if you did not receive the determination in your chosen language. To protect your rights, you also must continue to claim benefits each week that you are unemployed.”
14. The above message was also written in Spanish:

“El documento adjunto contiene información importante sobre la razón por la cual usted está descalificado/a para recibir los beneficios del Seguro de Desempleo y sobre cómo apelar. Hágalo traducir inmediatamente. Si necesita asistencia con la traducción o tiene preguntas, por favor llame a la línea gratuita al 1-888-822-3422 y seleccione 1 para español. La Oficina de Servicios Multilingües está abierta de lunes a viernes, de 8:30 A.M. hasta 12:00 P.M. y de 1:00 P.M. a 4:00 P.M. Si desea apelar, tiene que solicitar una audiencia. La fecha límite para presentar una apelación es de 10 días calendarios a partir de la fecha de envío del documento; 30 días calendarios con justa causa por la demora; o, en algunos casos, 60 días calendarios si no recibió la determinación en su idioma seleccionado. Para proteger sus derechos, también tiene que continuar a solicitar los beneficios por cada semana que esté desempleado/a.”
15. On April 26, 2023, the claimant received the second notice when it was delivered to her UI Online inbox.
16. When the second notice was posted on the claimant's UI online account, the claimant received an email notifying her that the second notice had been posted on her UI online account.
17. In June 2023, the claimant's daughter read the second notice to the claimant and translated it for her.
18. When the daughter translated the second notice, the claimant understood that it was a disqualification.

19. The claimant failed to appeal the second notice on time because she felt “a little bit discouraged” after having received two disqualifications i.e., the first notice and the second notice.
20. The claimant spoke to some of her friends who encouraged her to file an appeal, telling her that she had a right to file an appeal.
21. On October 6, 2023, 164 days after its determination, the claimant mailed her appeal to the second notice.
22. No DUA agent discouraged the claimant from filing any appeal.
23. No employer agent discouraged the claimant from filing any appeal.
24. On August 25, 2023, the claimant changed her DUA preferred language of service from English to Spanish.

### Ruling of the Board

In accordance with our statutory obligation, we review 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 is not entitled to a hearing on the merits of the October 22<sup>nd</sup> Notice.

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 DUA regulation at 430 CMR 4.14 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 . . . 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: ... (5) An inability to effectively communicate or comprehend English and the party is unable to find a suitable translator to explain the notice of determination within the ten day filing period . . . .

In the instant case, the review examiner found that the claimant's primary language is Spanish, not English. Findings of Fact ## 4–5. The claimant did not appeal the October 22<sup>nd</sup> Notice within the ten-day deadline because it was written in English, and she needed her daughter to read and interpret it for her. Finding of Fact # 10. Thereafter, the claimant submitted her appeal to the DUA by U.S. Mail, with a postmark of November 4, 2022 — 13 days after the Notice had been issued. Finding of Fact # 11. Where the claimant did not file her appeal within the ten-day appeal period because she does not effectively communicate in English and required help translating the October 22<sup>nd</sup> Notice, the review examiner properly concluded that the claimant established good cause for her late appeal of that determination.

Nonetheless, the review denied the claimant's request for a hearing on the merits of the October 22<sup>nd</sup> Notice on the grounds that the claimant had filed her appeal of the April 26<sup>th</sup> Notice more than 30 days after it was issued and had not met the criteria for waiving the 30-day limitation on filing an appeal. *See* Findings of Fact ## 15–21. This was in error, because this issue was not before the review examiner.

Because the claimant established good cause for her late appeal of the October 22<sup>nd</sup> Notice, she was entitled to a hearing on the merits. The DUA never issued a determination that the April 26<sup>th</sup> Notice was appealed late. Therefore, the review examiner had no authority to hold a hearing as to timeliness of that appeal pursuant under G.L. c. 151A, § 39(b). He certainly could not use it as a basis to deny the claimant a hearing on the original October 22<sup>nd</sup> determination. *See* Board of Review Decision 0080 6688 30 (October 18, 2023).

We, therefore, conclude as a matter of law that the claimant is entitled to a hearing on the merits of the October 22<sup>nd</sup> Notice, because she established good cause for her late appeal of that determination pursuant to the provisions of G.L. c. 151A, § 39(b), and 430 CMR 4.14(5).

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the Notice of Disqualification in Issue ID # 0078 3681 81, dated October 22, 2022.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 29, 2024**



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](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.

JPCA/rh