

The review examiner dismissed claimant’s appeal filed via U.S. Mail, because DUA received it five days after the ten-day appeal window lapsed. However, the record establishes that the claimant’s appeal was postmarked on the tenth day. Board reversed and held that the claimant filed the hearing request in a timely manner pursuant to G.L. c. 151A, § 39(b).

**Board of Review
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Issue ID: 0078 6095 56

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to dismiss her request for a hearing on the merits of a determination to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with the DUA, effective September 4, 2022. On October 31, 2022, the DUA issued a Notice of Disqualification pursuant to G.L. c. 151A, § 25(a), which she appealed on November 10, 2022, and DUA subsequently received on November 15, 2022. On December 31, 2022, the DUA issued a Notice of Disqualification pursuant to G.L. c. 151A, § 39(b), stating that the claimant did not have good cause for her late appeal submission. The claimant timely appealed this determination. Following a hearing on the G.L. c. 151A, § 39(b), issue, the review examiner affirmed the agency’s determination in a decision rendered on February 11, 2023. We accepted the claimant’s application for review.

The review examiner concluded that the claimant did not have good cause for failing to timely file an appeal of the October 31, 2022, Notice of Disqualification pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14. Thus, she was not entitled to a hearing on the merits of the underlying determination. The Board accepted the claimant’s application for review. 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 the late appeal of the October 31, 2022, Notice of Disqualification, is supported by substantial and credible evidence and is free from error of law, where there is a finding that the claimant submitted her appeal via U.S. Mail on November 10, 2022, which was the tenth day after the determination issued.

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 9/4/22.
2. The claimant's correspondence preference is electronic delivery.
3. On 10/31/22, DUA issued a Notice of Disqualification ("the Notice") to the claimant stating that she was not entitled to receive benefits for the week beginning 10/23/2022 because she failed to attend/attain the UI Career Center Seminar/Initial RESEA requirement within the required time period.
4. The claimant received the Notice of Disqualification when it was placed correctly in her UI Online inbox.
5. The Notice states in How to Request a hearing on this Determination, "This Determination will be final unless 1.) you request a hearing within ten calendar days after the date of mailing,...."
6. DUA records [sic] that the claimant viewed her inbox on 11/4/22, 11/6/22, and 11/10/22.
7. The claimant read the Notice on or about the date it was issued.
8. The claimant did not read the Notice thoroughly to understand her right to appeal.
9. The claimant did not appeal the Notice immediately because she mistakenly believed the latest she could mail her appeal to the DUA was 11/10/22. The tenth day after the Notice issue date [sic].
10. The claimant did not know she could submit her appeal online.
11. The claimant submitted her appeal via U.S. Mail on 11/10/22.
12. The DUA received the claimant's appeal on 11/15/22.
13. On 12/31/22, the DUA issued the claimant a second Notice of Disqualification, indicating that she did not have good cause for her late filing of the appeal of the Notice.
14. The claimant promptly appealed the second Notice of Disqualification electronically on 1/3/23.

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.

After such review, the Board adopts the review examiner’s findings of fact, except Finding of Fact # 9, to the extent that it contains a mixture of fact and law by characterizing the claimant’s belief regarding the appeal timeframe as mistaken. “Application of law to fact has long been a matter entrusted to the informed judgment of the board of review.” Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463–464 (1979). In adopting the remaining findings, we deem 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’s appeal is untimely.

G.L. c. 151A, § 39(b) sets forth a time limit for requesting a hearing, and 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. . . .

In accordance with G.L. c. 151A, § 39(b), the DUA has promulgated regulations pertaining to the timelines of requests for hearings. The relevant language in 430 CMR 4.13(3) specifies that a “request for a hearing shall be deemed filed . . . on the date postmarked, if mailed.” Additionally, 430 CMR 4.13(3) states that “[a] request is timely if it is . . . postmarked *on or before* the tenth calendar day after the date of mailing...” (emphasis added).

Here, because the initial Notice of Disqualification was issued by the agency on October 31, 2022, the deadline for filing a request for a hearing was ten days later, on November 10, 2022. *See* Findings of Fact ## 2 and 5; G.L. c. 151A, § 39(b). The review examiner credited the claimant’s testimony and found that she mailed the request for a hearing on November 10, 2022, via U.S. Mail. Finding of Fact #11. This finding is supported by Exhibit 4 of the hearing record, which includes a photocopy of the envelope that she used to send her appeal to DUA, as well as the appeal document itself.¹ The envelope was postmarked November 10, 2022, rendering it timely. Taking the findings and the plain language of 430 CMR 4.13(3) together, it was an error of law for the review examiner to dismiss the claimant’s appeal merely because the DUA received the claimant’s appeal on November 15, 2022, outside the ten-day appeal timeframe.

We, therefore, conclude as a matter of law that the claimant is entitled to a hearing on the merits of the October 31, 2022, Notice of Disqualification, because the claimant’s appeal was filed in a timely manner under G.L. c. 151A, § 39(b).

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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 of her underlying disqualification under G.L. c. 151A, § 25(a).



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 30, 2023



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.

JMO/rh