

The claimant demonstrated that he intended to file an appeal of the disqualifying determination, but inadvertently attached the appeal to an earlier monetary determination in which he was determined eligible for benefits. Where the appeal to the disqualifying determination would have been timely filed, but for this error, the Board deemed the appeal to have been timely pursuant to G.L. c. 151A § 39(b).

**Board of Review
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Issue ID: 0078 6226 73

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 his request for a hearing on the merits in connection with 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 August 14, 2022. On September 15, 2022, the DUA issued a Notice of Disqualification pursuant to G.L. c. 151A, § 25(e)(1) (quit determination), which he electronically appealed on November 18, 2022, and DUA subsequently received on the same date. On January 13, 2023, the DUA issued a Notice of Disqualification pursuant to G.L. c. 151A, § 39(b), stating that the claimant did not have justification for his late appeal submission (late appeal determination). The claimant timely appealed the latter determination. Following a hearing on the G.L. c. 151A, § 39(b), issue, the review examiner affirmed the agency's late appeal determination in a decision rendered on February 24, 2023.

The review examiner concluded that, pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14.–4.15, the claimant was not entitled to a hearing on the merits of the underlying quit determination, because he did not establish justification to file a hearing request after the statutory deadline. We 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, DUA's electronic record-keeping system, UI Online (UI Online), 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 justification for the late appeal of the September 15, 2022, quit determination, is supported by substantial and credible evidence and is free from error of law, where the claimant mistakenly appealed the incorrect determination.

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 8/14/22.
2. The claimant's correspondence preference is electronic delivery.
3. On 9/15/22, DUA issued a Notice of Disqualification (the Notice) to the claimant stating that she [sic] is not entitled to receive benefits beginning 2/27/2022 and until she [sic] had had eight weeks of work and has earned an amount equivalent to or in excess of 8 times your weekly benefit amount.
4. On 9/15/22, the claimant received the Notice when it was placed correctly in her [sic] UI Online inbox.
5. The claimant read the Notice on or about 9/15/22.
6. The claimant did not appeal the Notice within the allotted 10-day deadline because she [sic] appealed the wrong determination letter.
7. On 11/18/22, the claimant called the DUA to speak to an agent regarding her [sic] claim. The DUA agent told the claimant that she [sic] appealed the wrong letter and advised her [sic] to appeal the Notice.
8. The claimant filed an appeal electronically on 11/18/22.
9. On 1/13/23, the DUA issued the claimant a second Notice of Disqualification, indicating that she [sic] did not have justification for her [sic] late filing of the appeal of the Notice.
10. The claimant promptly appealed that determination on 1/13/23.

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. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence.¹ 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 disqualifying quit determination.

G.L. c. 151A, § 39(b) sets forth a time limit for requesting a hearing, and provides, in pertinent part, as follows:

¹ We note that the review examiner referred to the claimant with she/her pronouns throughout the findings, which is likely because the claimant's mother, who acted in the capacities of witness and representative, presented most of the hearing testimony. The claimant's mother had referred to the claimant with he/him pronouns throughout the hearing.

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. 430 CMR 4.13-4.15. The relevant language in 430 CMR 4.13(1) specifies that “[a]n interested party shall request a hearing within ten calendar days after delivery, in hand, or mailing of the Commissioner's determination. This ten-day filing period may be extended by the Commissioner, for good cause shown as set forth in 430 CMR 4.14, provided a party files their request for a hearing within 30 calendar days after delivery or mailing of the Commissioner's determination.”

Here, because the agency issued the initial quit determination on September 15, 2022, the deadline for filing a request for a hearing was ten days later, on September 25, 2022. G.L. c. 151A, § 39(b); *see* Finding of Fact # 3. The review examiner found that, as the claimant elected to receive DUA correspondence electronically, he received the quit determination on the date it was placed in his UI Online inbox. Findings of Fact ## 2 and 4. The review examiner further found that the claimant electronically submitted a request for a hearing on November 18, 2022, more than two months after DUA issued the quit determination. *See* Finding of Fact # 8. Based on these findings, the review examiner concluded that the claimant's appeal was governed by 430 CMR 4.15, and he lacked justification for the late appeal submission.

However, the review examiner's analysis did not go far enough. During the hearing, the claimant and his mother testified that they contacted the DUA on November 18, 2022, and spoke with an agency representative about the claimant's claim, where they learned that the claimant had inadvertently filed an appeal to an earlier monetary determination instead of filing an appeal to the September 15, 2022, quit determination and that, with the assistance of the representative, the claimant promptly filed an electronic appeal on the same date. Findings of Fact ##7-8.² We note that UI Online records corroborate the claimant's testimony that he spoke with a DUA representative on November 18, 2022.

In addition, the record establishes that, on August 18, 2022, the DUA issued a monetary determination that informed the claimant of his weekly benefit amount and detailed his base period wages. *See* Exhibit 10. With his electronic submission on September 24, 2022, the claimant technically appealed that determination. *See* Exhibit 11.³ We see no cognizable legal basis for appealing the monetary determination, since it merely showed that the DUA had deemed him monetarily eligible for benefits and nothing else contained in the determination was adverse to the claimant's interests. The monetary determination did not serve as a disqualification notice, and this fact tends to give further credence to the claimant's testimony and contention on appeal, which

² 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).

³ These exhibits are also part of the unchallenged evidence in the record.

is that he intended to appeal the September 15, 2022, quit determination instead of the August 18, 2022, monetary determination.

Considering the foregoing, we can reasonably infer that the claimant intended to appeal the quit determination when he submitted the appeal of the monetary determination. Moreover, we note that, when that appeal was filed on September 24, 2022, it was still within the 10-day appeal window for the quit determination. Taken together, we believe the findings, the claimant's testimony, and the November 18, 2022, entry in UI Online demonstrate that he intended to file an appeal of the quit determination issued on September 15, 2022, but mistakenly filed the appeal in response to the monetary determination. Where the appeal of the quit determination would have been timely filed but for this error, we decline to penalize him for formally appealing the wrong issue. We deem his appeal of the quit determination to have been timely filed. *See* Board of Review Decision 0021 9945 62 (Aug. 21, 2017).

We, therefore, conclude as a matter of law that that the claimant is entitled to a hearing on the merits of the September 15, 2022, quit determination, because the claimant's appeal was filed within the statutory deadline 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 his underlying disqualification under G.L. c. 151A, § 25(e)(1).

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 14, 2023



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

JMO/rh