

**The review examiner erred in concluding that the employer was not entitled to party status or relief of charges under G.L. c. 151A, § 38A. Nor would the employer be denied party status under G.L. c. 151A, § 39(a) or (b), as its response to the DUA request for information was found to be adequate and DUA records show that the response was, in fact, timely.**

**Board of Review  
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**Issue ID: 0078 6499 94**

### Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) denying the employer party status and relief of benefit charges. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits effective October 9, 2022. The agency sent the employer a questionnaire to complete regarding the claimant's employment status. The deadline to respond to the questionnaire was November 7, 2021. The employer returned the completed questionnaire to the agency on November 3, 2021. The agency determined that the employer's response to the questionnaire was not timely and/or adequate in a determination issued on November 25, 2022. The employer appealed, and its agent attended the hearing. In a decision rendered on February 15, 2023, the review examiner affirmed the agency determination, concluding that the employer did not respond to the agency's request for information in a timely manner, as required by G.L. c. 151A, § 38A, and, as a result, the employer was no longer a party to further proceedings and was not entitled to relief from charges. We accepted the employer's application for review.

The issue on appeal is whether the review examiner's decision, which concluded that the employer lost party status and entitlement to relief of benefit charges pursuant to G.L. c. 151A, § 38A, because the employer's third-party agent failed to timely respond to a request for information, is supported by substantial and credible evidence and is free from error of law.

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 employer's appeal.

### Findings of Fact

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

1. The Department of Unemployment Assistance (DUA) issued the employer a Lack of Work Notification (the Questionnaire) dated October 26, 2022, the response to which was due on or before October 31, 2022.

2. The employer's third-party agent was delayed in returning the Questionnaire because their internal computer system erroneously indicated that the due date was November 7, 2022.
3. The questionnaire requested details and supporting documentation regarding the claimant's separation from employment. The employer's agent answered all applicable questions on the Questionnaire. He signed and returned the Questionnaire on November 3, 2022.
4. On November 25, 2022, the DUA issued the employer a "Notice of Disqualification," indicating that the information provided by the employer in response to the questionnaire was late and/or inadequate, and that the employer would not be considered a party to further proceedings relating to the allowance of the claim.

### 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 as follows. We reject the portion of Finding of Fact # 1 that states the questionnaire was due on or before October 31, 2022, as it is inconsistent with the DUA's records. We also reject Finding of Fact # 2, as it is also inconsistent with the record. 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 employer was not entitled to party status or relief of charges.

G.L. c. 151A, § 38A provides as follows:

- (a) If the director, or the director's authorized representative, determines, after providing written or electronic notice to the employer, that a payment of benefits was made because the employing unit, or an agent of the employing unit, was at fault for failing to respond timely or adequately to any request of the department for information relating to the claim for benefits, then: **(i) the employing unit, except for employing units making payments into the Unemployment Compensation Fund under section 14A, shall not be relieved of charges on account of any such payment of benefits;** and (ii) if the employing unit makes payments into the Fund under section 14A, it shall not be relieved from reimbursing the fund on account of any such payment of benefits. For purposes of this subsection, a response shall be considered inadequate if it fails to provide sufficient facts to enable the department to make the proper determination regarding a claim for benefits. A response shall not be considered inadequate if the department fails to ask for all necessary information, except in any case where there has been a failure to respond. (Emphasis added.)

While the review examiner concluded that the employer's agent had provided an adequate response to the DUA's request for information, he affirmed the determination, finding that the employer was not party to the claim and would not be entitled to relief of charges because the employer's agent responded after the deadline had elapsed. *See* Finding of Fact # 3. However, as set forth in the above highlighted section of the statute, the penalty for not providing adequate information is only that the employer *shall not be relieved of charges* on account of any payment of benefits on the claim. It does not include the denial of party status to an employer. Therefore, the review examiner erred in concluding that the employer was no longer entitled to party status pursuant to G.L. c. 151A, § 38A, solely because it did not respond to the DUA's request for information in a timely manner.

There are other provisions of the unemployment statute, G.L. c. 151A, § 38(a) and (b), which deny party status to an employer which fails to respond timely or adequately to DUA requests for information. However, we decline to impose such a penalty because, in this case, the employer's response was both adequate and timely.

A review of UI Online, the DUA's electronic recordkeeping system, shows that the employer was required to respond to the DUA's request for information no later than November 7, 2022. As the employer's third-party agent responded to the DUA's request on November 3, 2022, the review examiner erred in concluding that the employer's response was untimely. Finding of Fact # 3.

We, therefore, conclude as a matter of law that the review examiner's conclusion that the employer was not entitled to party status or relief of charges, whether pursuant to G.L. c. 151A, §§ 38(a), (b), or 38A, is not free from error of law, because the employer's third-party agent provided an adequate and timely response to the DUA's request for information.

The review examiner's decision is reversed. The employer shall not be penalized, pursuant to G.L. c. 151A, § 38A, because its response to the agency was both timely and adequate.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 24, 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](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.

LSW/rh