

**The claimant did not receive the disqualifying determination until after the 30-day extended filing period because of technical issues with his electronic device, then filed his appeal promptly. Held he met the criteria to file a late appeal pursuant to 430 CMR 4.15(2).**

**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 6807 52**

### 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 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 11, 2022. On September 27, 2022, the DUA issued a disqualifying determination, Issue ID # 0078 2326 06, denying benefits pursuant to G.L. c. 151A, § 25(e)(2), due to the claimant's separation from his employment (disqualifying determination). The claimant appealed the disqualifying determination on November 22, 2022, 56 days after such determination was issued. On January 5, 2023, the DUA issued a determination denying a hearing on the appealed disqualifying determination on the ground that the claimant had filed the hearing request after the statutory deadline without showing good cause for filing a late appeal (late appeal determination). The claimant then requested a hearing on the late appeal determination on January 25, 2023. Following a hearing, attended by the claimant, the review examiner affirmed the agency's late appeal determination in a decision rendered on February 25, 2023. The Board accepted the claimant's application for review.

The review examiner concluded that the claimant did not have justification for failing to timely file an appeal of the disqualifying determination pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14–4.15. Thus, he was not entitled to a hearing on the merits. 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 meet the criteria to file his appeal more than 30 days after the date of the disqualifying determination, is supported by substantial and credible evidence and is free from error of law, where the claimant was unable to view the documents in his inbox due to technical difficulties with his electronic device.

### 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 2/11/22.
2. At the time of filing, the claimant chose to receive correspondence from DUA electronically. The claimant changed his preference to United States Postal Service on 12/12/22.
3. On 9/27/22, DUA issued a Notice of Disqualification (Notice) to the claimant regarding his separation from employment.
4. The claimant was unable to view documents in his Inbox due to technical issues with his electronic device. The claimant called DUA several times for assistance, but the issue was not resolved until the appeal period had expired.
5. The claimant struggled with navigation of the DUA website until he got a friend to assist him. The claimant was able to view the Notice with the help of his friend. He first saw the Notice during the week beginning 11/13/22.
6. The claimant filed an appeal of the Notice on 11/21/22, 63 days after the Notice was issued.
7. On 1/5/23, DUA issued a Notice of Disqualification (Second Notice) for the claimant's late appeal.
8. The claimant filed an appeal of the Second Notice on 1/17/23, 12 days after the Second Notice was issued. The claimant does not know why this appeal was late as he filled out the form and returned it by mail as soon as he received it.

### 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 ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact except as follows. The Board rejects that portion of Finding of Fact # 1, which states the claimant's effective date of his claim is February 11, 2022, as the DUA's electronic record keeping system, UI Online, shows the actual effective date is September 11, 2022.

In addition, we reject the portions of Findings of Fact ## 6 and 8 that incorrectly reflect the dates of appeal as November 21, 2022, and January 17, 2023, respectively. The record reflects that the claimant submitted both appeals by U.S. mail. *See Exhibits ## 3, 4, and 7.*<sup>1</sup> Pursuant to DUA regulations, 430 CMR 4.13(3), when a claimant submits a request for hearing by mail, the filing

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<sup>1</sup> Exhibits 3 and 4 are copies of the claimant's disqualifying determination appeal and Exhibit 7 is a copy of his late appeal determination appeal. 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).

of such request is determined by the postmark date. Therefore, the correct appeal filing dates in this case are the postmark dates stamped on each envelope. Those postmarks show that the disqualifying determination was appealed on November 22, 2022, 56 days after it was issued and the late appeal determination was appealed on January 25, 2023, 20 days after it was issued.

In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's decision that the claimant is not entitled to a hearing on the merits of the disqualifying determination.

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 a 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 430 CMR 4.14, good cause is defined as "circumstances beyond one's control that prevented the filing of a request for hearing within the prescribed ten-day filing period."

In this case, the claimant filed his appeal 56 days after the DUA issued its disqualifying determination. Finding of Fact # 6. DUA regulations allow, under a few circumstances, a party to file an appeal beyond 30 days from the original determination. Specifically, 430 CMR 4.15 provides, in pertinent part, as follows:

The 30 day limitation on filing a request for a hearing shall not apply where the party establishes that: . . . (2) The Commissioner's determination is received by the party beyond the 30 day extended filing period and the party promptly files a request for hearing; . . .

Here, the disqualifying determination was placed in the claimant's inbox prior to the deadline for filing his appeal on October 3, 2022. *See Findings of Fact ## 2 and 3.* However, since the claimant experienced technical difficulties accessing the contents of his inbox, he did not receive the disqualifying determination until sometime during the week of November 13, 2022. *See Findings of Fact ## 4 and 5.* Thus, the claimant had not received the disqualifying determination until after the 30-day extended filing period. Although the record is vague as to when the claimant saw the disqualifying determination during the week of November 13, 2022, we can reasonably infer that his appeal on November 22, 2022, was filed shortly thereafter. *See Finding of Fact # 6.*

Finally, although Finding of Fact # 8 shows that the claimant also filed his late appeal determination beyond the statutory time frame, we need not consider the issue. In Board of Review Decision 0080 6688 30 (Oct. 18, 2023), the Board held the claimant was entitled to a hearing on the merits of the disqualifying determination, because he met the criteria for filing late. The review

examiner had no authority to deny the claimant a hearing on the merits based solely upon an untimely filing of his late appeal determination, because the DUA had not issued a separate determination informing the claimant that the late appeal determination was also untimely. Id.

We, therefore, conclude as a matter of law that the claimant is entitled to a hearing on the merits of the disqualifying determination, because he met the criteria for filing a hearing request after the statutory deadline as permitted under G.L. c. 151A, § 39(b), and 430 CMR 4.15(2).

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the disqualifying determination dated September 27, 2022, in Issue ID # 0078 2326 06.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 24, 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.

DY/rh