**Although the claimant was aware of correspondence from the DUA in her UI Online inbox, she was unable to open it using her older computer and she was unable to get through to anyone at DUA for assistance. Finally, a friend used his computer to access her UI Online account. At that point, she was able to view her disqualifying determination and promptly filed her appeal. Held the claimant met the criteria for submitting a late appeal pursuant to 430 CMR 4.15(2).**

**Board of Review**
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**Paul T. Fitzgerald, Esq.**
**Chairman**
**Charlene A. Stawicki, Esq.**
**Member**
**Michael J. Albano**
**Member**

**Issue ID: 0079 0692 30**

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), which concluded that the claimant did not meet the criteria for failing to timely request a hearing on a determination issued on December 7, 2022. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for benefits with the DUA, effective November 27, 2022. On December 7, 2022, the DUA issued a monetary determination that she had not earned sufficient wages to qualify for unemployment benefits (Monetary Determination), which the claimant appealed on January 17, 2023. On February 1, 2023, the DUA issued a determination denying her appeal of the Monetary Determination due to filing the appeal late without justification (Late Appeal). She timely appealed the Late Appeal determination. Following a hearing on the Late Appeal determination, the review examiner affirmed the agency's determination in a decision rendered on March 23, 2022. The Board accepted the claimant's application for review.

The review examiner concluded that the claimant did not meet the criteria for failing to timely file an appeal of the Monetary Determination pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14–4.15. Thus, she was not entitled to a hearing on the merits of this Monetary Determination. 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 her appeal beyond 30 days from the date of the Monetary Determination, is supported by substantial and credible evidence and is free from error of law, where the claimant was unable to open and view the determination using her computer and was unable to reach anyone at the DUA.

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 11/27/2022.

2. The claimant chose to receive communications from the DUA electronically.

3. On December 7, 2022, the DUA issued a Monetary Determination to the claimant stating she had not earned sufficient wages in her base period to qualify for unemployment benefits.

4. The claimant received the Monetary Determination on December 7, 2022, when it was delivered to her UI Online Inbox in accordance with her correspondence preference.

5. The Monetary Determination includes information on how to correct wage information and how to request an appeal.

6. The claimant viewed her UI Online Inbox on December 8, 2022. The claimant was not able to open and view the Monetary Determination on the old computer she was using to access her UI Online account.

7. When the claimant attempted to request weekly benefits, she was not able to do so and saw a message on her UI Online profile stating that the DUA's records showed that the claimant had not earned enough wages to qualify for benefits.

8. Based on information on the DUA website, the claimant expected to receive a Notice of Disqualification if she were denied benefits. The claimant further expected to receive any such notice through the mail.

9. The claimant called and went to two unemployment agency offices in person but was not able to speak to anyone from the DUA as call volume was high and the offices were closed.

10. On January 17, 2023, the claimant spoke to a friend about her unemployment claim. The claimant and her friend logged into the claimant's UI Online account on the friend's computer and were able to open and read the Monetary Determination.

11. On January 17, 2023, 41 days after the Notice of Disqualification was issued, the claimant filed an appeal of the Notice of Disqualification through UI Online.

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. However, as discussed more fully below, we

disagree with the review examiner's legal conclusion that the claimant did not meet the criteria for filing a late appeal.

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. . . .

In this case, the claimant filed her appeal 41 days after the DUA issued its determination. Finding of Fact # 11. DUA regulations specify circumstances that meet the statutory criteria for filing a late appeal within the meaning of G.L. c. 151A, § 39(b), and allow, under a few circumstances, a party to file an appeal beyond 30 days from the original determination. Specifically, 430 CMR 4.15 provides:

> The 30-day limitation on filing a request for a hearing shall not apply where the party establishes that:
>
> (1) A Division employee directly discouraged the party from timely requesting a hearing and such discouragement results in the party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing.
>
> (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.
>
> (3) The Commissioner's determination is not received, and the party promptly files a request for a hearing after he or she knows that a determination was issued.
>
> (4) An employer threatened, intimidated or harassed the party or a witness for the party, which resulted in the party's failure to file for a timely hearing.

The express language of this regulation places the burden upon the claimant to show that one of these four criteria applies. We need not consider (1) and (4), because the findings of fact do not support a conclusion that either of these criteria are applicable to the claimant's circumstances. Because 430 CMR 4.15(3) contemplates that the determination is never received, we also do not believe that this provision applies to the facts here. In this case, the question is whether, under criteria (2), the claimant received the notice of disqualification "beyond the 30-day extended filing period and [she] promptly [filed] a request for hearing." As set forth below, we believe that the claimant's circumstances fall within the scope of 430 CMR 4.15(2).

The review examiner found that, at the time the claimant filed her claim, she selected electronic correspondence as the means by which the DUA should communicate with her. Finding of Fact # 2. The DUA's December 7, 2022, Monetary Determination was electronically sent to the

claimant and was put into her UI Online inbox. Finding of Fact # 4. Moreover, the claimant checked her UI Online inbox on December 8, 2022, and knew a document was in there, but could not open it and view it on the old computer she was using to access her UI Online Inbox. Finding of Fact # 6. She called Customer Service several times, was never able to get through, and went to two unemployment offices in person, but they were closed. Finding of Fact # 9. She was finally able to open the document after speaking to a friend on January 17, 2023, when they logged onto her account with his computer and were able to open and read the Monetary Determination. Finding of Fact # 10.

Normally, we would conclude, as the review examiner did, that the depositing of the notice into the UI Online inbox constitutes receipt of the notice. When a claimant has free access to her account, there is no reason why she cannot access it, read a determination, and then take timely action in response. However, if a claimant is aware of a document but cannot access it, it would be incumbent upon her to seek assistance from the DUA regarding its content.

In this case, the record shows that, after seeing that there was a document in her inbox, the claimant tried to call the DUA customer service several times but was not able to get through to anyone. She also went to two unemployment offices in person to seek assistance, but they were closed. In our view, this shows that the claimant made diligent efforts to obtain such assistance. Further, the findings show that, upon finally being able to open the determination, the claimant promptly filed her hearing request. *See* Findings of Fact ## 10 and 11.

The claimant's situation and actions persuade us that the review examiner's decision is not in accord with the spirit of 430 CMR 4.15, the prior decisions of this Board, or with the mandate under G.L. c. 151A, § 74, to liberally interpret the unemployment law. In prior decisions under G.L. c. 151A, 39(b), and the relevant regulations, this Board has consistently held claimants to a standard of reasonableness. *See, e.g.*, Board of Review Decision 0033 7690 36 (May 29, 2020); Board of Review Decision 0029 2124 94 (June 20, 2019); and Board of Review Decision 0025 6888 02 (Sept. 6, 2018). We believe that the claimant has met this standard. The technological issue which prevented the claimant from accessing the determination notice was beyond her control. Thereafter, she took reasonable but unsuccessful steps to try to find out what the December 7, 2022, determination said and to promptly appeal the determination once she read it. Under these circumstances, we believe that the claimant has met the criteria for her late appeal within the meaning of 430 CMR 4.15(2).

We, therefore, conclude as a matter of law that the claimant met the criteria to file a late appeal pursuant to 430 CMR 4.15(2).

The review examiner's decision is reversed. The claimant is entitled to have a hearing on the merits of her Monetary Determination in Issue ID # 0079 0692 30.



**BOSTON, MASSACHUSETTS**
**DATE OF DECISION - April 10, 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

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.

PGS/rh