

The claimant did not receive the DUA email notifying her of new correspondence in her UI online inbox. Thus, she did not receive sufficient notice of the disqualifying determination within the meaning of the Due Process Clause. As the claimant filed an appeal immediately upon learning about the determination, she met the criteria for failing to file a timely appeal within the meaning of 430 CMR 4.15(3).

**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: 0079 0914 38

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 benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On September 20, 2022, the DUA issued to the claimant a Notice of Disqualification stating that the claimant was not eligible for benefits because it was determined the claimant was employed and working a full-time schedule of working hours (disqualifying determination). The claimant appealed the disqualifying determination on January 18, 2023, 121 days after it was issued. On April 25, 2023, DUA issued a Notice of Disqualification stating that the claimant did not have good cause for submitting her appeal after the statutory deadline (late appeal determination). Following a hearing on the merits, the review examiner affirmed the agency's late appeal determination in a decision rendered on June 9, 2023. We accepted the claimant's application for review.

A hearing on the disqualifying determination was denied after the review examiner determined that the claimant had not shown justification for the late appeal pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.15. 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 for failing to file a timely appeal because she would only check her UI inbox when she received an email notification of correspondence, is supported by substantial and credible evidence and is free from error of law.

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 insurance benefits effective December 19, 2021.
2. The claimant's selected her correspondence preference as electronic upon filing.
3. On September 20, 2022, the Department of Unemployment Assistance (DUA) electronically issued the claimant a Notice of Disqualification (notice) to her UI Online inbox.
4. The claimant received the notice in her UI Online inbox on September 20, 2022, when the notice was issued to her.
5. The claimant did not receive an email informing her she had a new message in her UI Online inbox.
6. The claimant does not check her UI Online inbox unless she receives the email notifying her there is a new message in her UI Online inbox.
7. The claimant did not check her UI online inbox on or around September 20, 2022, because she did not receive the email message from the DUA.
8. The claimant realized she had not received payments or heard any information from the DUA around January when she was speaking to a friend who had applied and was already receiving payments.
9. On January 18, 2023, the claimant visited a DUA center in [City A], Massachusetts in January 2023. A representative at the center informed the claimant that she had received the notice and gave her all the information needed to receive the notice.
10. The claimant completed the appeal on that day with the representative.
11. January 18, 2023, is the 121st calendar day following September 20, 2022.
12. In March 2023, the claimant visited a DUA center in [City B], Massachusetts and spoke to a representative who helped her change her preferred language to Mandarin and her correspondence preference to U.S. Mail.
13. No one discouraged [or] threatened the claimant from submitting an appeal.

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 of fact are supported by substantial and credible evidence; and (2) whether the review examiner's 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 fails to meet the criteria for not filing a timely 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 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. . . .

However, the DUA regulation 430 CMR 4.15, provides in relevant 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 a 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. . . .

The review examiner concluded that the claimant was not entitled to a hearing on the merits of the disqualifying determination because the claimant was not monitoring her UI inbox, unless she received an email alert that there was correspondence. *See* Finding of Fact # 6. While we agree that claimants are obligated to make all reasonable efforts to monitor the status of their claim for benefits, a claimant's right to receive notice and an opportunity to be heard is a fundamental right.

The Due Process Clause of the Fourteenth Amendment prohibits the States from depriving any person of property without "notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (further citations omitted). The claimant selected electronic correspondence as her communication preference but did not receive an email from the DUA informing her that important documents relevant to her claim had been placed in her UI online inbox. Findings of Fact ## 2 and 5. Therefore, we believe that she did not receive the requisite notice necessary to file a timely appeal. *See* Board of Review Decision 0055 8011 26 (Mar. 29, 2021).

Moreover, the claimant promptly submitted her appeal with assistance from a DUA representative upon visiting a DUA center and learning of the disqualifying determination. *See* Findings of Fact ## 9–10. Thus, she met the criteria for submitting her late appeal pursuant to 430 CMR 4.15(3).

We, therefore, conclude as a matter of law that the claimant established that she met the criteria to file her appeal beyond the statutory appeal period pursuant to 430 CMR 4.15.

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the disqualifying determination, Issue ID # 0079 0914 38.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 29, 2024



Paul T. Fitzgerald, Esq.
Chairman



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.

MM/rh