Where the claimant inadvertently appealed the monetary determination instead of the disqualifying separation determination, and it was filed within 10 days of the separation determination date, the appeal on the separation determination is deemed timely filed pursuant to G.L. c. 151A § 39(b).

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 1850 70

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

On December 28, 2022, the DUA issued to the claimant a Notice of Disqualification stating that she was not eligible benefits after separating from her employer (December 28th determination). The claimant appealed this determination on February 1, 2023, 35 days after it was issued. On March 11, 2023, the DUA issued to the claimant a Notice of Disqualification, stating that she did not have good cause for submitting her appeal after the statutory deadline (March 11th determination). The claimant appealed the March 11th determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's March 11th determination in a decision rendered on May 3, 2023. We accepted the claimant's application for review.

A hearing on the merits of the December 28th determination was denied after the review examiner determined that the claimant had not shown good cause 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, as well as information in the DUA's electronic record-keeping system, UI Online.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was not entitled to a hearing on the merits because she did not meet the allowable criteria to file a late appeal, is supported by substantial and credible evidence and is free from error of law, where the review examiner found that the claimant had initially appealed the wrong notice.

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 9/11/2022.

2. At the time of filing, the claimant chose to receive correspondence from DUA electronically.

3. On 12/28/22, DUA issued a Notice of Disqualification (Notice) to the claimant regarding her separation from employment.

4. The claimant received the Notice when it was properly placed in her Unemployment Insurance (UI) Inbox.

5. The claimant had technical issues that prevented her from opening documents from her Inbox. The claimant has had that issue since before the Notice was issued.

6. The problem continues to prevent the claimant from viewing correspondence from DUA. The claimant was unable to open the Appeal Case Folder for the hearing.

7. The claimant viewed her UI Inbox on 12/28/22 and 1/5/23 but was unable to view the Notice.

8. The claimant does not know when she saw the Notice. She filed an [appeal] of a different Notice.

9. The claimant received a telephone call from DUA on 2/1/23 informing her that she had appealed the wrong notice. The claimant filed an appeal of the Notice that same day.

10. The claimant filed an appeal of the Notice on 2/1/23, 35 days after the Notice was issued.

11. On 3/11/23, the DUA issued a Notice of Disqualification (Second Notice) for the claimant's late appeal.

12. The claimant appealed the Second Notice on 3/21/23.

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 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 was not entitled to a hearing on the merits of the December 28th 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 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. . . .

By regulation, the DUA allows appellants to file their appeal beyond 30 days, if they meet a narrow set of criteria. *See* 430 CMR 4.15.

The review examiner concluded that the claimant did not meet the criteria for failing to file a timely appeal of the December 28th determination. The review examiner arrived at this conclusion after finding that the DUA notified the claimant on February 1, 2023, that she had mistakenly appealed the wrong issue. *See* Finding of Fact # 9. We note that the information contained in the UI Online system shows that the claimant filed said incorrect appeal on January 5, 2023, and it was on a monetary issue. Further, the UI Online systems shows that, on February 1, 2023, a DUA representative entered an appeal note on the monetary issue, which states: "Spoke with claimant to determine that she filed the monetary appeal in error thinking she was appealing her disqualification. I then explained how to withdraw the monetary appeal and how to appeal the discharge disqualification." The claimant immediately filed an appeal on the December 28th determination that same day, February 1, 2023. *See* Finding of Fact # 10.

In addressing similar situations, the Board has declined to penalize a claimant for inadvertently filing an appeal of the incorrect determination, where the record shows that the claimant intended to file an appeal of the correct determination and promptly filed such an appeal upon learning of the mistake. *See, e.g.,* Board of Review Decision N6-H8V4-8KLD (May 19, 2022), and Board of Review Decision 0021 9945 62 (Aug. 21, 2017).

Based on Findings of Fact ## 8 and 9, as well as the DUA representative's conversation with the claimant on February 1, 2023, as documented in the UI Online system, it is evident that the claimant was intending to timely appeal the December 28th determination when she appealed the monetary issue on January 5, 2023. Consistent with Board precedent, we decline to penalize her for formally appealing the wrong issue. Further, as the appeal was filed on January 5, 2023, within the 10-day appeal window, we deem the claimant's appeal of the present issue to have been timely filed.

We, therefore, conclude as a matter of law that the claimant is deemed to have timely filed her appeal 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 the disqualifying determination, dated December 28, 2022, in Issue ID # 0078 8028 72.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 26, 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.

SVL/rh