

The claimant is automatically entitled to have his reopened claim pre-dated pursuant to G.L. c. 151A, § 62A(g), because the review examiner found that the employer did not provide him with the required written notice about how to file for unemployment benefits.

**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 5728 23

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 an earlier effective date for a claim for 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 January 2, 2022. He subsequently separated from his position with the employer on September 23, 2022, but did not reopen his claim at that time. The claimant later filed a new unemployment claim on March 20, 2023, and requested a pre-date to reopen his 2022 claim effective September 25, 2022. His request to pre-date the claim was denied in a determination issued on April 15, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's initial determination and denied the request to pre-date the claim in a decision rendered on June 6, 2023. We accepted the claimant's application for review.

An earlier effective date was denied after the review examiner determined that the claimant did not have good cause for failing to timely reopen his claim for benefits, and, thus, he was not entitled to have his claim pre-dated under G.L. c. 151A, §§ 23(b) and 24(c). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to make subsidiary findings from the record pertaining to information provided by the claimant's former employer. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant is not entitled to a pre-date, even though his former employer failed to give him written notice of how to file a claim, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed an unemployment insurance claim on 2/24/20 and obtained an effective date of his claim of 2/23/20.
2. The claimant initially exhausted his claim on 7/12/20.
3. The claimant was eligible to extend his claim for benefits.
4. On 9/16/20, the claimant re-opened the above claim.
5. On 9/17/20, the claimant was approved for a pre-date to re-open his claim effective 7/12/20. He was able to request extended benefits effective 7/12/20.
6. The claimant worked for landscaping and construction company “[A]” from early April, 2021 to late December, 2021. He was laid off during the winter of 2021.
7. The claimant filed an unemployment insurance claim on 1/3/22 and obtained an effective date of his claim of 1/2/22. The benefit year end date of the claim is 12/31/22.
8. The claimant knew he could file an unemployment insurance claim because a manager at “[A]” told him he could file a claim during his layoff.
9. “[A]” did not give the claimant information in writing about his right to file a claim when he was laid off during the winter of 2021.
10. The claimant returned to work for “[A]” in late March, 2022. He requested benefits each week effective 1/2/22 to 3/27/22.
11. The claimant quit his employment with “[A]” on or about 9/23/22.
12. “[A]” did not give the claimant information in writing about his right to file an unemployment insurance claim when the claimant quit his employment.
13. The claimant did not re-open his claim after separating from employment with “[A]” because he did not know that was an option.
14. The claimant did not contact DUA to ask questions about his claim after separating from employment with “[A]”.
15. On 3/20/23, the claimant filed an unemployment insurance claim following a layoff from a scaffolding company.
16. On 3/23/23, the claimant requested a pre-date to re-open his 2022 claim effective 9/25/22 and requested to pre-date his 2023 claim to 2/26/23.

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 consolidated 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 consolidated findings of fact and deems 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 claimant was not entitled to have his claim pre-dated.

The legislature enacted G.L. c. 151A, § 62A(g), in order to ensure that workers are informed of the process for seeking unemployment benefits. It provides, in pertinent part, as follows:

Each employer shall issue to every separated employee, as soon as practicable, but not to exceed 30 days from the last day said employee performed compensable work, written information furnished or approved by said division which shall contain the name and mailing address of the employer, the identification number assigned to the employer by said division, instructions on how to file a claim for unemployment compensation, the address and telephone number of the regional office which serves the recipient, and the telephone number of the teleclaim information line. Delivery is made when an employer provides such information to an employee in person or by mail to the employee's last known address. The waiting period under section 23 for an employee who did not receive the information required by this paragraph and who failed to file timely for benefits, shall be the Sunday of the initial week such employee would have been eligible to receive unemployment compensation. Each employer shall have the burden of demonstrating compliance with the provisions required herein.

(Emphasis added.)

The review examiner concluded that the claimant had not shown good cause for failing to timely reopen his 2022 claim for unemployment benefits. The basis of the review examiner's conclusion is somewhat unclear, as she noted in her conclusion that the claimant had previously reopened a claim in 2020, which indicates that she believed that he was aware that he could reopen his 2022 claim. Consolidated Finding # 4. However, she also found that the claimant did not know that reopening his claim was an option after separating from the employer in September, 2022. Consolidated Finding # 13. In any case, we disagree with the review examiner's conclusion, as the claimant's knowledge regarding his right to reopen his claim for unemployment benefits is immaterial in this case.

Pursuant to G.L. c. 151A, § 23(b), 24(c), and 430 CMR 4.01(3) and 4.01(4), a claim reopen effective date may be pre-dated under certain circumstances, if good cause for the delay in reopening the claim is established. As noted above, the review examiner in this case concluded that the claimant did not provide good cause. However, G.L. c. 151A, § 62A(g), mandates granting a pre-date if the claimant's former employer does not provide him with written information about how to file an unemployment claim.

Because, after remand, the review examiner found that the claimant's previous employer did not provide him with written notice about how to file an unemployment claim, the claimant is, by operation of law, entitled to have the effective date of his reopened claim made retroactive to the Sunday of the initial week that he would have been eligible for unemployment compensation after he separated from the employer. Consolidated Finding # 12. As the claimant separated from his previous employer on September 23, 2022, the Sunday of the initial week he would have been eligible after separating is September 25, 2022.

We, therefore, conclude as a matter of law that pursuant to the requirements of G.L. c. 151A, § 62A(g), the claimant is automatically entitled to have his reopened claim pre-dated.

The review examiner's decision is reversed. The claimant is entitled to have the effective date on his reopened claim pre-dated to September 25, 2022.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 26, 2024



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

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