Where the claimant met the criteria for his late appeal of a determination disqualifying him under G.L. c. 151A, § 25(a), he was entitled to a hearing on the merits on that disqualification despite filing a late appeal of the DUA's intervening disqualification under G.L. c. 151A, § 39(b). The review examiner had no authority to rule on the timeliness of the § 39(b) determination.

Board of Review
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Chairman
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Issue ID: 0079 6714 85

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 August 22, 2022, the DUA issued to the claimant a Notice of Disqualification (August 22nd Notice) disqualifying him from benefits under G.L. c. 151A, § 25(a). The claimant appealed the determination electronically on April 2, 2023. On April 22, 2023, the DUA issued a Notice of Disqualification (April 22nd Notice), stating that the claimant did not have justification for submitting his appeal after the statutory deadline. The claimant appealed the April 22nd Notice on September 1, 2023. Following a hearing on the merits, the review examiner affirmed the agency's April 22, 2023, determination in a decision rendered on October 21, 2023. We accepted the claimant's application for review.

A hearing on the merits of the August 22nd Notice was denied after the review examiner determined that, while the claimant met the criteria to file his late appeal of the August 22nd Notice, he had not met the criteria to file his late appeal of the April 22nd Notice 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 was not entitled to a hearing on the merits of the August 22nd Notice even though he met the criteria to file a late appeal of that determination, because he did not meet the criteria to appeal the April 22nd Notice beyond 30 days of the date it was issued, 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 an initial unemployment claim effective the week beginning June 26, 2022 (hereinafter, "2022-01 initial unemployment claim").

2. The claimant has elected to receive correspondence from the Department of Unemployment Assistance (hereinafter, "DUA") by electronic communication.

3. On August 22, 2022, the DUA electronically mailed to the claimant's UI Online Inbox a Notice of Disqualification, Issue Identification Number 0078 0845 90, denying the claimant benefits under Section 25(a) of the Law commencing the week beginning August 14, 2022, and until he met the requirements of the RESEA Review program. On the Notice of Disqualification, the DUA wrote: "You are not eligible to receive benefits beginning 8/14/2022 and indefinitely until the week you attain your UI RESEA Review requirements because you have failed to take all of the required steps to complete the UI RESEA Review program within the time period required." The claimant received this Notice of Disqualification in his UI Online Inbox.

4. On August 26, 2022, the claimant viewed the Notice of Disqualification Issue Identification Number 0078 0845 90, that was issued on August 22, 2022, in his UI Online Inbox.

5. During the week of August 26, 2022, or the week prior, the claimant received a job offer and was provided a start date of work of August 29, 2022. The clamant accepted this job position.

6. After the week ending August 20, 2022, the claimant temporarily stopped requesting unemployment benefits on his 2022-01 initial because he started a new job.

7. On August 26, 2022, the claimant initiated a telephone call to the [Regional] Massachusetts Career Cener and spoke with a worker from the Career Center. During this conversation, the claimant notified the Career Center worker that the claimant had received a job offer. During this conversation, the claimant also discussed the Notice of Disqualification that was issued on August 22, 2022. During this conversation, the worker from the Career Center advised the claimant that the claimant should be all set as the claimant had already found another job and to disregard the appeal since that was starting another job.

8. On August 26, 2022, the claimant also submitted a form to the Career Center/Masshire titled: "I found a job."

9. On August 29, 2022, the claimant started the new job. In March 2023, the claimant stopped working for this employer.

10. The claimant re-opened his 2022-01 initial unemployment claim for the week ending March 25, 2023.

11. On April 2, 2023, the claimant appalled [sic] the Notice of Disqualification, Issue Identification Number 0078 0845 90, that was issued on August 22, 2022. The appeal request was late.

12. The claimant was late appealing the Notice of Disqualification, Issue Identification Number 0078 0845 90, that was issued on August 22, 2022 because on August 26, 2022, the claimant was advised by a worker from the Career Center during a telephone conversation that the claimant should be all set as the claimant had already found another job and to disregard the appeal since [he] was starting another job.

13. On April 22, 2023, the DUA electronically mailed to the claimant's UI Online Inbox a Notice of Disqualification, Issue Identification Number 0079 6714 85, denying the claimant's late appeal request for the underline [sic] matter due to lateness under Section 39 of the Law. On the Notice of Disqualification, the DUA wrote in part: "Your request for hearing was filed beyond 30 days from the date of the determination" and "It is determined that there is no justification to consider your request for hearing timely. Your request for hearing on the merits of your case is denied." The claimant received this Notice of Disqualification in his UI Online Inbox.

14. The Event Log Search Results records in UI Online for the claimant list "Claimant viewed the Claimant Inbox" for Create Date April 22, 2023.

15. On September 1, 2023, the claimant appealed the Notice of Disqualification, Issue Identification Number 0079 6714 85, that was issued on April 22, 2023. This appeal request was also late.

16. The claimant is not sure why he was late appealing the Notice of Disqualification, Issue Identification Number 0079 6714 85, that was issued on April 22, 2023 other than the claimant was receiving some information from the DUA that he was eligible for benefits, other information from the DUA that he was not entitled to benefits[,] and was also receiving some conflicting information about his benefits from workers at the DUA.

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 reject the review examiner's legal conclusion that the claimant is not entitled to a hearing on the merits of the August 22nd Notice.

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. . . .

The DUA regulation at 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:
>
> (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 . . . .

In the instant case, the review examiner found that the claimant was advised by a career center employee during a telephone conversation on August 26, 2022, that he "should be all set," because he had already found a new job and to disregard the appeal, since he was starting his new job. Finding of Fact # 7. After the claimant became separated from his new job, he reopened his claim for benefits. Findings of Fact ## 9–10. Thereafter, the claimant submitted his appeal to the DUA electronically on April 2, 2023, more than 30 days after the Notice had been issued. Finding of Fact # 11. Where the claimant did not file his appeal within the 30-day appeal period because he had been discouraged by a career center employee from submitting his appeal, the review examiner properly concluded that the claimant met the criteria to allow filing his late appeal of the August 22nd determination.

Nonetheless, the review examiner denied the claimant's request for a hearing on the merits of the August 22nd Notice on the grounds that the claimant had filed his appeal of the April 22nd Notice more than 30 days after it was issued and had not met the criteria for waiving the 30-day limitation on filing an appeal. *See* Finding of Fact # 16. This was in error, because this issue was not before the review examiner.

Because the claimant established that he met the criteria for his late appeal of the August 22nd Notice, he was entitled to a hearing on the merits. The DUA never issued a determination that the April 22nd Notice was appealed late. Therefore, the review examiner had no authority to hold a hearing as to the timeliness of that appeal pursuant to G.L. c. 151A, § 39(b). She certainly could not use it as a basis to deny the claimant a hearing on the original August 22nd determination. *See* Board of Review Decision 0080 6688 30 (October 18, 2023).

We, therefore, conclude as a matter of law that the claimant is entitled to a hearing on the merits of the August 22nd Notice, because he met the criteria to file a late appeal of that determination pursuant to the provisions of G.L. c. 151A, § 39(b), and 430 CMR 4.15(1).

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the Notice of Disqualification in Issue ID # 0078 0845 90, dated August 22, 2022.



BOSTON, MASSACHUSETTS
DATE OF DECISION - February 8, 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.

JPCA/rh