

Because the claimant did not receive a DUA email notifying her of new correspondence in her UI Online inbox, she did not receive sufficient notice of the determination within the meaning of the Due Process Clause. Inasmuch as the claimant filed an appeal immediately upon learning about the determination, she demonstrated good cause for failing to file a timely appeal within the meaning of G.L. c. 151A, § 39(b).

**Board of Review
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Issue ID: 0079 7226 75

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 March 11, 2023, the DUA issued a Notice of Disqualification to the claimant, stating that she had not shown good cause to pre-date her claim (pre-date determination). The claimant appealed the pre-date determination to the DUA hearings department on April 3, 2023, 23 days after the pre-date determination was issued. On April 25, 2023, the DUA issued a Notice of Disqualification denying a hearing on the merits of the pre-date determination, stating that the claimant did not have good cause for submitting her appeal after the statutory deadline (late appeal determination). The claimant timely filed an appeal of the late appeal determination. Following a hearing on the merits of the late appeal determination, the review examiner affirmed the agency's determination in a decision rendered on May 24, 2023. We accepted the claimant's application for review.

A hearing on the merits of the pre-date determination was denied because the review examiner concluded that the claimant did not show good cause for her late appeal pursuant to G.L. c. 151A, § 39(b). 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 have good cause for failing to timely file her appeal due to not checking her UI Online inbox at the time the pre-date determination 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. On October 11, 2022, the claimant filed a claim for unemployment benefits with the Department of Unemployment Assistance (DUA) with an effective date of October 9, 2022.
2. The claimant elected to receive her correspondence from the DUA electronically.
3. On March 11, 2023, the DUA placed a Notice of Disqualification (the First Notice) in the claimant's UI Online Inbox (Inbox) in Issue ID# 0079 4621 99-01, finding that, "after consideration of the facts submitted, it has been determined that your reason for not contacting this office to file your claim earlier does not constitute good cause."
4. The claimant received the First Notice when it was properly placed in her Inbox on March 11, 2023.
5. The claimant did not view her Inbox between March 11, 2023, and March 31, 2023, because she did not receive any email alerts notifying her that she had correspondence in her Inbox.
6. On March 31, 2023, the claimant viewed her Inbox for the first time since the First Notice was issued and saw the First Notice in her Inbox.
7. On April 3, 2023, the 23rd day after the First Notice was issued, the claimant filed her appeal of the First Notice by U.S. mail.
8. The claimant had no problem accessing her Inbox and nothing prevented her from seeing the First Notice before March 31, 2023, and filing a timely appeal.
9. On April 25, 2023, the DUA issued a second Notice of Disqualification (the Second Notice) to the claimant, finding that there was no good cause for the DUA to consider her appeal of the First Notice as timely filed under Chapter 151A, Section 39.
10. On April 28, 2023, the claimant filed her appeal of the Second Notice.
11. The claimant's appeal of the Second Notice was timely filed.

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 her pre-date 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. . . .

The review examiner concluded that the claimant was not entitled to a hearing on the merits of the pre-date determination even though she had not received an email from the DUA alerting her to look for correspondence in her UI Online inbox at the time it was issued. *See* Finding of Fact # 5. 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. For this reason, 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).

Upon discovering the pre-date determination in her UI Online inbox, she promptly filed her appeal. *See* Findings of Fact ## 6 and 7. Her due diligence indicates that the only reason for the late appeal was this lack of notice.

We, therefore, conclude as a matter of law that the claimant demonstrated good cause for filing her appeal of the pre-date determination beyond 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 her pre-date determination in Issue ID # 0079 4621 99.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 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.

AB/rh