

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

**Board of Review
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Issue ID: 0080 1276 20

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 separated from her position with the employer on April 3, 2023. She filed a claim for unemployment benefits with the DUA on May 30, 2023, and subsequently requested to have her claim pre-dated to April 2, 2023. Her request to pre-date the claim was denied in a determination issued on May 6, 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 3, 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 file a timely claim for benefits, and, thus, she was not entitled to have her claim pre-dated under G.L. c. 151A, §§ 23(b) and 24(c). 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 is not entitled to a pre-date because she was aware that she was able to file a claim as her husband had previously filed a claim for unemployment benefits, 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 worked for the employer until April 3, 2023, when she was laid off from work.
2. The claimant did not receive any information from the employer regarding Unemployment Insurance.

3. The claimant cannot recall seeing any postings on the work premises regarding Unemployment Insurance.
4. The claimant had never previously filed a claim for unemployment benefits. However, the claimant's husband had filed a claim.
5. The claimant was aware that she could file a claim for unemployment benefits when no longer working for the instant employer.
6. The claimant was "shocked" when laid off from work. The claimant did not file her claim for unemployment benefits, because she was focused on looking for employment.
7. The claimant immediately began looking for work after being notified of her lay off on April 3rd, 2023.
8. The claimant went on vacation with her family to Mexico during the period of April 16, 2023, through April 21, 2023.
9. The claimant was experiencing anxiety about the loss of her job but did not seek any medical assistance.
10. The claimant believed that when she filed a claim for unemployment benefits, it would be effective the date of her separation from work. (The claimant did not contact the Department of Unemployment Assistance prior to filing her claim with any questions.)
11. On May 1, 2023, the claimant filed her claim for unemployment benefits. The effective date of the claim is April 30, 2023.
12. The claimant requested a predate of her claim for unemployment benefits.
13. On May 6, 2023, a Notice of Disqualification was issued under Section 23(b) of the Law, indicating "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. You failed to contact this office prior to 4/30/2023 due to being out of the country on vacation." "A waiting period may not be served nor benefits paid on this claim for any week prior to 4/30/2023." The claimant filed an appeal to that determination.

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 was not entitled to have her 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 file her claim for unemployment benefits because the claimant admitted that she was aware she could file a claim. *See* Finding of Fact # 5. We disagree with the review examiner's conclusion, as the claimant's knowledge regarding her right to file a 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 effective date may be pre-dated under certain circumstances, if good cause for the delay in filing is established. The review examiner in this case decided 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 her with written information about how to file an unemployment claim.

Because the review examiner found that the claimant's previous employer did not provide her with written notice about how to file an unemployment claim, the claimant is, by operation of law, entitled to have the effective date of her claim made retroactive to the Sunday of the initial week that she would have been eligible for unemployment compensation after she separated from the employer. *See* Finding of Fact # 2. As the claimant separated from her previous employer on April 3, 2023, the Sunday of the initial week she would have been eligible after separating is April 2, 2023.

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 her claim pre-dated.

The review examiner's decision is reversed. The claimant is entitled to have the effective date on her claim pre-dated to April 2, 2023.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 15, 2023



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.

LSW/rh