

The review examiner erroneously concluded the claimant was not entitled to a hearing on the merits of a determination under G.L. c. 151A, § 24(b), due to her late appeal of the DUA's G.L. c. 151A, § 39(b) determination. However, the claimant's general confusion about the appeals process did not constitute good cause for her late appeal of the G.L. c. 151A, § 24(b) issue. For this reason, she was not entitled to a hearing on the merits on that disqualification.

**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: 0080 1596 87

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 affirm.

On April 25, 2023, the DUA issued to the claimant two Notices of Disqualification denying benefits under G.L. c. 151A, § 24(b), including the Notice in the instant case, which disqualified her from receiving benefits as of April 2, 2023 (the instant April 25th Notice). The claimant appealed both determinations electronically on May 7, 2023. On May 12, 2023, the DUA issued Notices of Disqualification in both cases (the instant May 12th Notice), stating that the claimant did not have good cause for submitting her appeals after the statutory deadline. The claimant appealed the May 12th Notices on October 3, 2023. Following a hearing on the merits, the review examiner affirmed the agency's May 12, 2023, determination in a decision rendered on November 8, 2023. We accepted the claimant's application for review.

A hearing on the merits of the instant April 25th Notice was denied after the review examiner determined that, while the claimant established good cause for her late appeal of the instant April 25th Notice, she had not met the criteria to establish justification for her late appeal of the May 12th 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 instant April 25th Notice even though she had good cause to file a late appeal of that determination, because she did not meet the criteria to appeal the May 12th 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 began attending school full-time on an unknown date.
2. In 3/2023, the claimant filed a new claim for unemployment benefits, effective for the week beginning 3/26/2023.
3. At the time the claimant filed her unemployment claim, she chose to receive her correspondence electronically.
4. Shortly after the claimant filed her unemployment claimant [sic], the Department of Unemployment Assistance (DUA) issued her a “Monetary Determination” finding her monetarily eligible to collect unemployment benefits.
5. On 4/25/2023, the DUA issued to the claimant, electronically to her UI Online inbox, a Notice of Disqualification (Notice 1) under Section 24(b) of the Law.
6. Notice 1 disqualified the claimant from receiving benefits based on her attendance at a full-time college degree program beginning 4/2/2023 and indefinitely. Notices 1 [sic] advised the claimant that the determination will become final unless she requested a hearing within ten calendar days after the date of mailing.
7. On 4/25/2023, the DUA issued to the claimant, electronically to her UI Online inbox, a second Notice of Disqualification (Notice 2) under Section 24(b) of the Law.
8. On 5/3/2023, the claimant viewed her UI Online inbox once.
9. The claimant was confused by the receipt of Notices 1 and 2 and unfamiliar with the appeal process.
10. On 5/7/2023, the claimant viewed her UI Online inbox three times.
11. On 5/7/2023, the claimant appealed Notices 1 and 2 electronically.
12. 5/7/2023 was the 12th day after Notices 1 and 2 were issued to her UI Online inbox on 4/25/2023.
13. The claimant waited until 5/7/2023 to file her appeal because she was confused about the appeal process.
14. On 5/12/2023, DUA issued to the claimant, electronically to her UI Online inbox, two additional Notices of Disqualification under Section 39(b) of the Law (Notice 3 and Notice 4).
15. Notices 3 and 4 notified the claimant that no good cause was found to consider the claimant’s 5/7/2023 appeals timely.

16. On an unknown date during the effective period of her claim, the claimant became pregnant and was diagnosed with pre-eclampsia.
17. On an unknown date, the claimant's grandmother was diagnosed with stage 4 cancer.
18. The claimant viewed her UI Online inbox once on 5/24/2023; five times on 6/2/2023; once on 6/19/2023 and 7/31/2023; twice on 8/12/2023; three times on 8/21/2023; once on 8/30/2023; and twice on 9/20/2023 and 9/30/2023.
19. On 10/3/2023, the claimant appealed Notices 3 and 4 electronically.
20. 10/3/2023 was 144th [sic] days after Notices 3 and 4 were issued to the claimant's UI Online inbox on 5/12/2023.
21. The claimant waited until 10/3/2023 because she was confused about the notices she received in her inbox and she "had a lot going on" with her pregnancy and her grandmother's illness.
22. The claimant was not discouraged by a DUA representative from filing an appeal of the Notices 3 and 4.
23. The claimant was not discouraged by a former employer from filing an appeal of the Notices 3 and 4.

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, while we affirm the review examiner's conclusion that the claimant is not entitled to a hearing on the merits of the instant April 25th Notice, our legal reasoning for this outcome differs, as discussed more fully below.

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 4.14 provides, in relevant part, as follows:

The Commissioner may extend the ten day filing period where a party establishes to the satisfaction of the Commissioner . . . that circumstances beyond his or her control prevented the filing of a request for a hearing within the prescribed ten day filing period. Examples of good cause for a failure to file a timely request for a hearing include, but are not limited to, the following: . . . (12) Any other circumstances beyond a party's control which prevented the filing of a timely appeal.

In the instant case, the review examiner found that the claimant was “confused by the receipt” of two different notices on the same day and was “unfamiliar with the appeal process.” Finding of Fact # 9. The review examiner also found that the claimant had also received a monetary determination indicating that she was approved for benefits. Finding of Fact # 4. But after checking her UI Online inbox on May 3 and May 7, 2023, the claimant submitted her appeal to the DUA electronically on May 7, 2023, 12 days after the instant April 25th Notice had been issued. Findings of Fact ## 11–12. Although the claimant did not file her appeal within the ten-day appeal period because she had been confused by multiple Notices from the DUA giving conflicting information, the review examiner concluded that the claimant established good cause for her late appeal of the instant April 25th determination.

Nonetheless, the review examiner denied the claimant's request for a hearing on the merits of the instant April 25th Notice on the grounds that the claimant had filed her appeal of the May 12th 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. Findings of Fact ## 19–20. This was an error, since this issue was not before the review examiner. The review examiner had no authority to hold a hearing as to the timeliness of the appeal of the May 12th Notice pursuant to G.L. c. 151A, § 39(b), because the agency had not issued a determination that it, too, had been filed late. Thus, she could not properly use it as a basis to deny the claimant a hearing on the instant April 25th determination. *See* Board of Review Decision 0080 6688 30 (October 18, 2023).

However, we disagree with the review examiner's legal conclusion that the claimant had established good cause for her late appeal of the instant April 25th Notice. Although the review examiner seemed to conclude that the claimant's confusion about the appeals process constituted “circumstances beyond a party's control which prevented the filing of a timely appeal,” as contemplated by 430 CMR 4.14(12), we disagree as a matter of law.

In the instant case, the claimant did not mistakenly appeal one determination when she meant to appeal a different determination that she received on the same day, as in other recent cases we have decided, which concluded that a claimant's confusion could constitute good cause for a late appeal. *See* Board of Review Decision 0078 6226 73 (April 14, 2023) (claimant filed appeal of monetary determination by mistake, instead of appealing separation determination, which otherwise would have been timely filed). Here, she did not timely file any determination. Mere confusion about the appeal process is not good cause. *See* Board of Review Decision 0074 8445 20 (May 30, 2023) (mere confusion about the reasons for disqualification is not a circumstance beyond the claimant's control).

We, therefore, conclude as a matter of law that the claimant is not entitled to a hearing on the merits of the April 25th Notice, because she failed to establish good cause for her late appeal of that determination pursuant to the provisions of G.L. c. 151A, § 39(b), and 430 CMR 4.14(12).

The review examiner's decision is affirmed. The claimant is not entitled to a hearing on the merits of the Notice of Disqualification in Issue ID # 0079 6308 07, dated April 25, 2023.

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