

An appeal of an April 24, 2023, Notice of Disqualification filed via U.S. Mail was received by the DUA after the 10-day appeal period. Although there was no postmark, the review examiner found that the claimant timely mailed her appeal on April 28th. Therefore, her appeal was not late and she was entitled to a hearing on the merits.

**Board of Review
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Issue ID: 0080 2025 66

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 April 24, 2023, the DUA issued to the claimant a Notice of Disqualification (April 24th Notice) stating that the claimant was not eligible for benefits because she failed to attend a Reemployment Services Eligibility Assessment (RESEA) seminar by the deadline. The claimant appealed the determination via U.S. Mail, and it was received by the DUA on May 8, 2023. On May 13, 2023, the DUA issued a Notice of Disqualification (May 13th Notice), stating that the claimant did not have good cause for submitting her appeal after the statutory deadline. The claimant appealed the May 13th Notice on July 16, 2023. Following a hearing on the merits, the review examiner affirmed the agency's May 13, 2023, determination in a decision rendered on August 11, 2023. We accepted the claimant's application for review.

A hearing on the merits of the April 24th Notice was denied after the review examiner determined that the claimant had not met the criteria for waiving the 30-day limitation on filing an appeal 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 April 24th Notice even though she timely appealed that determination, because she did not meet the criteria to appeal the May 13th 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. On 3/12/2023, the claimant filed a claim for unemployment benefits with the Department of Unemployment Assistance (DUA) with an effective date of 3/12/2023.
2. At the time of filing, the claimant chose to receive correspondence electronically.
3. On 4/24/2023, the DUA issued a Notice of Disqualification (4/24/2023 Notice), that stated the claimant was disqualified from receiving benefits for the week beginning 4/16/2023 because she failed to report for/attain the UI Career Center Seminar/Initial RESEA as required under Section 25(a) of the Law.
4. The claimant received the 4/24/2023 Notice, when it was properly issued to her unemployment insurance online account (UI Online account) inbox on 4/24/2023.
5. On 4/28/2023, the claimant mailed her appeal to the 4/24/2023 Notice through the U.S. Mail.
6. On 5/8/2023, the DUA received the claimant's appeal to the 4/24/2023 Notice through the U.S. Mail, 14 days after it was issued. The claimant's appeal was dated 4/27/2023 and the mailing envelope did not have a postmark date.
7. On 5/12/2023, the claimant spoke with a DUA representative to complete a telephone fact finding.
8. The claimant stated that her "phone service was cut off and [she] could not call anyone."
9. The claimant stated that she "had computer access through [her] laptop."
10. When she was asked if she attempted to schedule a seminar, the claimant stated, "I haven't because I have found a job and I don't want to continue unemployment. I don't want to receive unemployment if I have to go to a seminar."
11. On 5/13/2023, the DUA issued a Notice of Disqualification (5/13/2023 Notice) to the claimant indicating that her appeal of the 4/24/2023 Notice was filed more than 10 days from the date it was issued and that there was no good cause to consider the appeal timely.
12. The claimant received the 5/13/2023 Notice, when it was properly issued to her UI Online account inbox on 5/13/2023.
13. On 5/13/2023 and 5/28/2023, the claimant viewed her UI Online account inbox. The claimant did not file an appeal on these dates because she was looking for a job and thought she found one in mid-May 2023.

14. The claimant did not file a timely appeal to the 5/13/2023 Notice because she found a job in mid-May or beginning of June 2023, and she did not think she needed to continue with unemployment.
15. The claimant separated from her employment in mid-May 2023 or beginning of June 2023 after she worked for one day.
16. The claimant did not file an appeal after her employment ended in mid-May 2023 or beginning of June 2023 because she thought the issue would resolve once she attained the UI Career Center Seminar/Initial RESEA.
17. The claimant did not speak to a DUA representative between 5/13/2023 and 7/16/2023.
18. On 7/16/2023, the claimant electronically appealed the 5/13/2023 Notice, 64 days after it was issued, when she realized the disqualification from the 4/24/2023 Notice did not resolve after she attained the UI Career Center Seminar/Initial RESEA.
19. On 8/2/2023, at the hearing on this matter, the claimant's correspondence preference remained electronic.

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 April 24th 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 4.13 provides, in relevant part, as follows:

(3) A request for a hearing shall be deemed filed on the date it is received, if delivered in hand to a Division employee designated to receive such request, or on the date postmarked,

if mailed. A request is timely if it is delivered to the Division or postmarked on or before the tenth calendar day after the date of mailing or date of delivery, in hand, of the Commissioner's determination.

When a claimant sends an appeal of a determination via U.S. Mail, the DUA will consider that appeal to have been filed on the date it was postmarked. 430 CMR 4.13(3). Although there was no postmark on the envelope in this case, the review examiner expressly found that the claimant mailed her appeal of the April 24th Notice on April 28, 2023. Finding of Fact # 5. Given this finding, it is reasonable to infer that if the U.S. Postal Service had properly affixed a postmark to the envelope containing the claimant's appeal, it would have done so on the day or next business day after April 28th, when it was mailed. As either day was within the 10-day appeal period, the review examiner properly concluded that the claimant had filed a timely appeal of that determination.

Nonetheless, she denied the claimant's request for a hearing on the merits of the April 24th Notice on the grounds that the claimant had filed her appeal of the May 13th Notice more than 30 days after it was issued and had not shown justification for waiving the 30-day limitation on filing an appeal. *See* Findings of Fact ## 13–16. This was in error.

Because the claimant timely submitted her hearing request of the April 24th Notice, the DUA improperly issued the May 13th Notice that the appeal was filed late. *See* Findings of Fact ## 6 and 11. It is immaterial when the claimant appealed the May 13th Notice.

We, therefore, conclude as a matter of law that the claimant is entitled to a hearing on the merits of the April 24th Notice, because she timely appealed that determination pursuant to the provisions of G.L. c. 151A, § 39(b) and 430 CMR 4.13(3).

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 # 0079 9174 85, dated April 24, 2023.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 20, 2023



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.

LSW/rh