

Because claimant did not receive the email notifying him of new correspondence in his UI inbox for either a January 30th Notice of Disqualification or a February 13th Notice of Disqualification, he did not receive sufficient notice of the determinations within the meaning of the Due Process Clause. Once he saw them, he filed his hearing requests promptly. Held he met the criteria to file an appeal beyond 30 days pursuant to 430 CMR 4.15(3).

**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 4835 36
0080 4730 49**

Introduction and Procedural History of this Appeal

The claimant appeals two decisions by a review examiner of the Department of Unemployment Assistance (DUA) which concluded that the claimant did not have justification for failing to timely request a hearing on two determinations, one issued on January 30, 2023, and a second issued on February 13, 2023. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with the DUA, effective October 30, 2022. On January 30, 2023, the DUA issued a determination disqualifying him from receiving benefits until he attended an initial Reemployment Services and Eligibility Assessment (RESEA) seminar. On February 13, 2023, the DUA issued a second determination disqualifying the claimant until he attended a RESEA review meeting. The claimant appealed the February 13, 2023, determination on June 6, 2023, and appealed the January 30, 2023, determination on June 7, 2023. On June 8, 2023, the DUA issued two determinations, one in Issue ID # 0080 4835 36, and the other in Issue ID # 0080 4730 49, finding that the claimant had not shown justification for filing his appeal of either the January 30, 2023, determination or the February 13, 2023, determination beyond the 30-day deadline. Following a hearing on the merits of the two June 8, 2023, determinations, attended by the claimant, the review examiner affirmed the agency's initial determinations in two decisions rendered on July 25, 2023. We accepted the claimant's applications for review.¹

The review examiner concluded that the claimant did not meet the criteria to file an appeal of either determination beyond 30 days pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14–4.15. Thus, he was not entitled to a hearing on the merits of either RESEA determination. After considering the recorded testimony and evidence from the hearing, the review examiner's decisions, and the claimant's appeals, we remanded both cases to the review examiner to obtain additional information about the reason the claimant was delayed in filing his appeals. The claimant attended the consolidated remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record in both cases.

¹ Because both cases arise from nearly identical facts, we have consolidated these appeals into this single decision.

The issue before the Board is whether the review examiner's decisions, which concluded that the claimant did not meet the criteria to file his appeals of either the January 30, 2023, determination, or the February 13, 2023, determination more than 30 days after the date each was issued, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment in Issue ID # 0080 4835 36 are set forth below in their entirety:

1. The claimant filed a claim for unemployment benefits on 12/16/2022 with an effective date of 10/30/2022.
2. The claimant chose to receive correspondence from the Department of Unemployment Assistance (DUA) by electronic mail. The claimant entered and verified his correct personal email address under the contact information of his UI Online account.
3. In early January 2023, the claimant returned to work and stopped monitoring his electronic correspondence delivered to his UI Online inbox.
4. On 1/30/2023, the DUA emailed the claimant a Notice of Disqualification (the "notice") stating that he was not entitled for [sic] benefits for the period beginning 1/22/2023 under MGL Chapter 151A, § 25(a).
5. On or about 1/30/2023, the claimant did not receive an email in his personal email account informing him that new correspondence from the DUA requiring his attention had been placed in his UI Online inbox.
6. Since 1/30/2023, the claimant has monitored his personal email account inbox and spam folder.
7. Since 1/30/2023, the claimant has not been aware of any issue receiving emails from the DUA, or any other source, to his personal email account.
8. Since 1/30/2023, the claimant has not been aware of any issue logging into and viewing his UI Online inbox.
9. From 1/30/2023 to 6/06/2023, the claimant did not check his UI Online inbox to monitor his electronic correspondence. The claimant believed that since he returned to work in January 2023, he did not need to continue to monitor his electronic correspondence by checking his UI Online inbox.
10. On 6/6/21, the claimant read the messages from the DUA sent to his UI Online inbox, including the notice. The claimant submitted his request for appeal online and it was received by the DUA on that date.

11. The claimant waited 129 days to file an appeal of the 1/30/2023 notice because he was not monitoring his UI Online inbox and did not see the notice until June 2023.
12. On 6/7/2023, the DUA emailed the claimant a Notice of Disqualification stating “A determination was emailed to you on 01/30/23. Your request was received on 06/07/23, the 129th day after such determination was issued” and it was determined that “there is no justification to consider your request for hearing timely.”
13. The claimant received the 6/7/2023 Notice of Disqualification on or about the date it was emailed to him.
14. The claimant read the 6/7/2023 Notice of Disqualification and submitted a request for hearing which he signed on 6/13/2023 and that request was received by the DUA on 6/14/2023.

Credibility Assessment:

During the remand hearing, the claimant credibly testified that the personal email address he provided to the DUA upon filing for benefits was his correct personal email address. The claimant further credibly testified that since 2/13/2023, he has not been aware of any issues receiving emails from the DUA, or any other source, to his personal email account. At the remand hearing, the claimant credibly testified that since 2/13/2023, he has monitored his personal email account’s inbox and spam folder, and the claimant further asserted that he has not received an email from the DUA informing him that new correspondence from the DUA requiring his attention had been placed in his UI Online inbox. The claimant’s testimony at the remand hearing was straightforward, reasonable, and consistent. Moreover, the record does not contain substantial and credible evidence which casts doubt upon his assertions. As such, the claimant’s testimony is taken as credible.

The review examiner’s consolidated findings of fact and credibility assessment in Issue ID # 0080 4730 49 are set forth below in their entirety:

1. The claimant filed a claim for unemployment benefits on 12/16/2022 with an effective date of 10/30/2022.
2. The claimant chose to receive correspondence from the Department of Unemployment Assistance (DUA) by electronic mail. The claimant entered and verified his correct personal email address under the contact information of his UI Online account.
3. In early January 2023, the claimant returned to work and stopped monitoring his electronic correspondence delivered to his UI Online inbox.

4. On 2/13/2023, the DUA emailed the claimant a Notice of Disqualification (the “notice”) stating that he was not entitled for [sic] benefits for the period beginning 2/5/2023 under MGL Chapter 151A, § 25(a).
5. On or about 2/13/2023, the claimant did not receive an email in his personal email account informing him that new correspondence from the DUA requiring his attention had been placed in his UI Online inbox.
6. Since 2/13/2023, the claimant has monitored his personal email account inbox and spam folder.
7. Since 2/13/2023, the claimant has not been aware of any issue receiving emails from the DUA, or any other source, to his personal email account.
8. Since 2/13/2023, the claimant has not been aware of any issue logging into and viewing his UI Online inbox.
9. From 2/13/2023 to 6/6/2023, the claimant did not check his UI Online inbox to monitor his electronic correspondence. The claimant believed that since he returned to work in January 2023, he did not need to continue to monitor his electronic correspondence by checking his UI Online inbox.
10. On 6/6/21, the claimant read the messages from the DUA sent to his UI Online inbox, including the notice. The claimant submitted his request for appeal online and it was received by the DUA on that date.
11. The claimant waited 113 days to file an appeal of the 2/13/2023 notice because he was not monitoring his UI Online inbox and did not see the notice until June 2023.
12. On 6/7/2023, the DUA emailed the claimant a Notice of Disqualification stating “A determination, Form was sent to you on 2/12/2023. Your request was received on 06/06/2023 for reasons you did not have good cause for such late return was unknown to the DUA” and it was determined that “there is no justification to consider your request for hearing timely.”
13. The claimant received the 6/7/2023 Notice of Disqualification on or about the date it was emailed to him.
14. The claimant read the 6/7/2023 Notice of Disqualification and submitted a request for hearing which he signed on 6/13/2023 and that request was received by the DUA on 6/14/2023.

Credibility Assessment:

During the remand hearing, the claimant credibly testified that the personal email address he provided to the DUA upon filing for benefits was his correct personal

email address. The claimant further credibly testified that since 2/13/2023, he has not been aware of any issues receiving emails from the DUA, or any other source, to his personal email account. At the remand hearing, the claimant credibly testified that since 2/13/2023, he has monitored his personal email account's inbox and spam folder, and the claimant further asserted that he has not received an email from the DUA informing him that new correspondence from the DUA requiring his attention had been placed in his UI Online inbox on or about 2/13/2023. The claimant's testimony at the remand hearing was straightforward, reasonable, and consistent. Moreover, the record does not contain substantial and credible evidence which casts doubt upon his assertions. As such, the claimant's testimony is taken as credible.

Ruling of the Board

In accordance with our statutory obligation, we review the records and the decisions made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusions are free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. There appears to be a typographical error in Consolidated Finding # 12, which is identical in both cases. It states, in relevant part, that the DUA issued the determinations at issue on June 7, 2023. Consistent with the evidence of record, we believe that the review examiner intended to find that the determinations were issued on June 8, 2023. In adopting the remaining findings, we deem 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 did not meet the criteria to file a late appeal of either 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 a 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. . . .

In this case, the claimant filed his appeals of both issues more than 100 days after the DUA issued each determination. Consolidated Findings # 11. DUA regulations specify circumstances that constitute good cause for filing a late appeal within the meaning of G.L. c. 151A, § 39(b), and allow, under a few circumstances, a party to file an appeal beyond 30 days from the original determination. Specifically, 430 CMR 4.15 provides:

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;

(2) The Commissioner's determination is received by the party beyond the 30 day extended filing period and the party promptly files a request for hearing;

(3) The Commissioner's determination is not received and the party promptly files a request for a hearing after he or she knows that a determination was issued.

(4) An employer threatened, intimidated or harassed the party or a witness for the party, which resulted in the party's failure to file for a timely hearing.

The express language of this regulation places the burden upon the claimant to show that one of these four circumstances applies.

In each case, the review examiner concluded that the claimant was not entitled to a hearing on the merits of either issue because he was not closely monitoring his UI Online inbox after returning to work. Consolidated Findings # 9. 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 his communication preference but did not receive an email from the DUA informing him that either the January 30, 2023, or the February 13, 2023, determinations had been placed in his UI online inbox. Consolidated Findings ## 2 and 5. Therefore, we believe that he did not receive the requisite notice necessary to file a timely appeal of either determination. *See* Board of Review Decision 0055 8011 26 (Mar. 29, 2021).

The claimant promptly submitted his appeal upon reopening his claim and learning that there were pending issues impacting his eligibility for benefits. *See* Consolidated Findings ## 9–11. Thus, he met the criteria to file both late appeals pursuant to 430 CMR 4.15(3).

We, therefore, conclude as a matter of law that the claimant has met the criteria to file his appeals of both the January 30, 2023, and the February 13, 2023, determinations beyond the statutory appeal period pursuant to 430 CMR 4.15(3).

The review examiner's decisions are reversed. The claimant is entitled to a hearing on the merits of Issue ID # 0079 1518 60 and Issue ID # 0079 2532 63.

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