

Where the claimant inadvertently appealed the earnings determination instead of the overpayment waiver determination, and it was filed within 10 days of the overpayment waiver determination date, the Board deemed the appeal to have been timely filed pursuant to G.L. c. 151A § 39(b).

**Board of Review
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Issue ID: 0080 7728 03

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 a waiver of an overpayment. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On September 10, 2022, the DUA issued to the claimant a Notice of Disqualification stating she was not eligible for a waiver of an overpayment of benefits previously paid to the claimant (September 10th determination). The claimant appealed the determination on July 17, 2023, 311 days after the Notice was issued. On August 17, 2023, the DUA issued to the claimant a Notice of Disqualification, stating that she did not have good cause for submitting her appeal after the statutory deadline (August 17th determination). The claimant appealed the August 17th determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's August 17th determination in a decision rendered on October 5, 2023. We accepted the claimant's application for review.

A hearing on the merits of the September 10th determination was denied after the review examiner determined that the claimant had not shown good cause for the late 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, as well as information in the DUA's electronic record-keeping system, UI Online.

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 because she did not realize she had filed an appeal of the incorrect determination until after the deadline had elapsed, 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 April 3, 2020, the claimant filed a claim for unemployment insurance (UI) benefits with the Department of Unemployment Assistance (DUA) effective March 22, 2020.
2. The claimant elected to receive electronic correspondence from the DUA. The claimant provided the DUA with her correct email address.
3. On September 10, 2022, the DUA issued the claimant a Notice of Disqualification (the first notice) in issue ID # 0071 3625 72-01, denying her application for a waiver under Massachusetts General Law Chapter 151A, § 69(c).
4. On September 10, 2022, the claimant received the first notice when it was delivered to her UI Online inbox.
5. When the first notice was posted on the claimant's UI online account, the claimant received an email notifying her that the first notice had been posted on her UI online account.
6. On July 17, 2023, 311 days after its determination, the claimant submitted an electronic appeal to the first notice.
7. On August 17, 2023, the DUA issued the claimant a Notice of Disqualification (the second notice) in issue ID # 0080 7728 03-01 and determined that there is no justification for the late filing of the first notice's appeal.
8. On August 24, 2023, the claimant submitted her electronic appeal to the second notice.
9. No DUA agent discouraged the claimant from filing an appeal to the first notice.
10. The employer did not discourage the claimant from filing an appeal to the first notice.
11. The claimant failed to make a timely appeal of the first notice because she incorrectly thought that she had already filed an appeal on September 12, 2022.

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 disagree with the review examiner's legal conclusion that the claimant was not entitled to a hearing on the merits of the September 10th 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. . . .

By regulation, the DUA allows appellants to file their appeal beyond 30 days, if they meet a narrow set of criteria. *See* 430 CMR 4.15.

The review examiner concluded that the claimant did not meet the criteria for failing to file a timely appeal of the September 10th determination, because she believed that she had successfully filed her appeal on September 12, 2022. Finding of Fact # 11. While not included in the findings of fact, the review examiner explained in her decision that the claimant mistakenly believed that she had timely filed her appeal of the September 10th determination, because she had inadvertently filed an appeal of a different issue on September 12, 2022.

In addressing similar situations, the Board has declined to penalize a claimant for inadvertently filing an appeal of the incorrect determination where the record shows the claimant intended to file an appeal of the correct determination, and promptly filed such an appeal upon learning of the mistake. *See, e.g.,* Board of Review Decision N6-H8V4-8KLD (May 19, 2022), *and* Board of Review Decision 0021 9945 62 (Aug. 21, 2017).

Upon review of the claimant's September 12, 2022, appeal, it is evident that the claimant was intending to appeal the September 10th determination. In UI Online, we note that the September 12th appeal states that she believes she is entitled to a waiver of the overpayment at issue because she was determined not to be at fault for the overpayment at issue and had used the money overpaid to her to pay her debt and medical bills. Moreover, Finding of Fact # 11, which explains that the claimant incorrectly thought that she had filed a timely appeal of the September 10th determination, supports the inference that the claimant intended to file an appeal of that determination on September 12, 2022. As both the review examiner's decision and the entries in UI Online show that the claimant intended to timely file an appeal of the September 10th determination, we decline to penalize her for formally appealing the wrong issue. Further, as the appeal was filed on September 12, 2022, within the 10-day appeal window, we deem the claimant's appeal of the present issue to have been timely filed.

We, therefore, conclude as a matter of law that the claimant is deemed to have timely filed his appeal within 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 the disqualifying determination, dated September 10, 2022, in Issue ID # 0071 3625 72.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 8, 2024



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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