

The claimant is automatically entitled to have his reopened claim pre-dated pursuant to G.L. c. 151A, § 62A(g), because the employer did not provide him with the required written notice about how to file for unemployment benefits. While the claimant was entitled to a pre-date of this claim, he had exhausted all of the benefits to which he was entitled as of the date of this decision. In effect, he does not receive any additional benefits on his claim.

**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 7754 40

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 was separated from his position with the employer on May 12, 2023. He filed a claim for unemployment benefits with the DUA, effective June 25, 2023, and requested a pre-date to open his claim effective May 7, 2023. His request to pre-date the claim was denied in a determination issued on July 19, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied the request to pre-date the claim in a decision rendered on August 11, 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 timely reopen his claim for benefits, and, thus, he was not entitled to have his claim pre-dated under G.L. c. 151A, §§ 23(b) and 24(c). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to take additional testimony and other evidence regarding the claimant's last day of work and whether the employer had provided him with written information on how to file a claim for unemployment compensation within 30 days of his last day of employment. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. Our decision is based upon our review of the entire record.

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 he had previously certified for unemployment benefits and knew they were available to him but chose not to apply because he was interviewing for jobs and expected to get one, 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 are set forth below in their entirety:

1. The effective date of the claim is June 25, 2023.
2. The claimant filed for and received unemployment benefits once before.
3. The claimant worked full time for the employer from the beginning of September 2022 to May 12, 2023 as the Director of Underwriting.
4. The claimant separated from his employment with the employer because the employer was moving to New York and the claimant was unable to relocate.
5. The employer did not provide the claimant information regarding applying for unemployment benefits when he separated from his employment.
6. The claimant did not file a claim for unemployment benefits immediately upon separation. The claimant had multiple interviews and believed that he would get a job quickly.
7. After several weeks of applying for jobs and interviewing for jobs, the claimant still did not have a job.
8. The claimant applied for benefits on June 29, 2023, because he had not gotten a job yet and his bills were piling up.

Credibility Assessment:

Neither the claimant nor the employer uploaded any additional documentary evidence to the hearing. In the first hearing the claimant testified that his employment ended on May 26, 2023, even though his questionnaire from the DUA asserted that his employment ended on May 4, 2023. The claimant asserted that he remembered that he separated from his employment on May 26, 2023, because it was near his birthday. In the remanded hearing, the claimant testified that his employment ended on May 12, 2023. This testimony was corroborated by the employer's witness thereby giving it more credibility. The Accountant testified in the hearing that he reviewed the employer's records and found that the claimant's last day was May 12, 2023.

The claimant testified in the remanded hearing that he did not receive any information regarding unemployment when he separated from his employment with the employer. The Accountant corroborated the claimant's testimony and testified in the hearing that he did not believe that any documents were forwarded to the claimant regarding unemployment.

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 consolidated 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 consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant was not entitled to have his 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 initially concluded that the claimant had not shown good cause for failing to timely open his claim for unemployment benefits. The basis of the review examiner's conclusion was that the claimant had previously filed for and received unemployment benefits before, and he chose to wait to open his claim because he had been on multiple interviews and believed he would get a new job quickly. See Consolidated Findings ## 2 and 6. We disagree with the review examiner's conclusion as a matter of law, because the claimant's knowledge regarding his right to open 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 reopening the claim is established. As noted above, the review examiner in this case initially concluded 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 him with written information about how to file an unemployment claim.

Because, after remand, the review examiner found that the claimant's previous employer did not provide him with notice about how to file an unemployment claim, the claimant is, by operation of law, entitled to have the effective date of his reopened claim made retroactive to the Sunday of

the initial week that he would have been eligible for unemployment compensation after he separated from the employer. *See Consolidated Finding # 5.* As the claimant separated from his previous employer on May 12, 2023, the Sunday of the initial week he would have been eligible after separating is May 14, 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 his claim pre-dated.

The review examiner's decision is reversed. The claimant is entitled to have the effective date on his claim pre-dated to May 14, 2023.

However, from review of the DUA's UI Online computer database, we note that the claimant exhausted his claim for benefits as of the week ending January 27, 2024. Although the claimant is entitled to a pre-date on this claim, he is not entitled to certify for any additional weeks on this claim.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 26, 2024



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.

JPCA/rh