

Because claimant did not receive the email notifying her the DUA had issued a June 1, 2023, disqualifying determination, she did not receive sufficient notice of that determination within the meaning of the Due Process Clause. The review examiner did not have the authority to deny the claimant a hearing on the merits of the June 1st determination because she had not timely appealed the subsequent late appeal determination issued under G.L. c. 151A, § 39(b). Once the claimant learned of the June 1st determination, she filed his hearing requests promptly. Held, she met the criteria to file an appeal beyond 30 days pursuant to 430 CMR 4.15(3).

**Board of Review
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Issue ID: 0080 8788 68

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 of a Notice of Disqualification issued on June 1, 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 August 28, 2022. On June 1, 2023, the DUA issued a Notice of Disqualification (June 1st determination) disqualifying her from receiving benefits beginning February 26, 2023, because she was not capable of work. The claimant appealed the determination to the DUA hearings department on August 2, 2023. On August 10, 2023, the DUA sent the claimant a Notice of Disqualification (August 10th determination) informing her that she did not have a qualifying reason for filing a late appeal. The claimant filed an appeal of the August 10th determination on August 28, 2023. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied the claimant a hearing on the merits of the June 1st determination. We accepted the claimant's application for review.

A hearing on the merits of the June 1st determination was denied after the review examiner determined that the claimant had not met the criteria to file an appeal beyond 30 days, pursuant to 430 CMR 4.15, and had not shown good cause for failing to file a timely appeal of the August 10th determination pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14. 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 for subsidiary findings of fact about the reason the claimant was delayed in filing an appeal. Thereafter, the review examiner issued her consolidated findings of fact. 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 did not meet the criteria to file an appeal beyond 30 days of the June 1st determination as she was not closely monitoring her UI Online account, and further that she had not shown good

cause for failing to appeal the August 10th determination within ten days, 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 are set forth below in their entirety:

1. The claimant initially filed for UI benefits on August 31, 2022, with an effective date of August 28, 2022, and a benefit year end date of August 26, 2023.
2. The claimant elected to receive electronic correspondence when she signed up for Unemployment Insurance (UI) benefits.
3. The claimant's last week of benefit requests was the week ending April 22, 2023.
4. On June 1, 2023, a Notice of Disqualification Determination for a Capability issue, along with the Appeal Request Information documents were placed in the claimant's UI Inbox.
5. The claimant did not check her UI account regularly and did not see the Notice of Disqualification in her Inbox when it was received.
6. On July 28, 2023, the claimant received a Monthly Statement of Account with an overpayment balance via mail. The claimant signed into her UI online account and viewed the June 1, 2023, Notice of Disqualification.
7. On August 2, 2023, the claimant contacted the UI customer service number and asked an agent what she should do. The agent told the claimant that she needed to file an appeal of the determination.
8. On August 2, 2023, the claimant submitted an appeal of the June 1, 2023, Notice of Disqualification, sixty-three (63) days after the date of receipt of the Notice of Disqualification.
9. On August 10, 2023, a Notice of Disqualification Determination for a Late Appeal Filing along with the Appeal Request Information documents were placed in the claimant's UI Inbox.
10. On August 10, 2023, the claimant viewed her Inbox and received the Late Appeal Notice of Disqualification and Appeal Request Information documents.
11. The claimant did not thoroughly read the Appeal Request Information documents citing the filing deadline of ten calendar days after the date of Notice. The claimant did not realize that she had a deadline to file her appeal.

12. On August 28, 2023, the claimant electronically filed an appeal of the Notice of Disqualification Determination for a Late Appeal Filing, eighteen (18) days after the date of the Notice.

Credibility Assessment:

There were no findings [sic] in the record that would place the claimant's credibility in doubt.

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. 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 the June 1st determination.

The unemployment statute sets forth a time limit for requesting a hearing on an eligibility determination issued by the DUA. 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 her appeal more than 63 days after the DUA issued the June 1st determination. Consolidated Finding # 8. 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.

The review examiner concluded that the claimant was not entitled to a hearing on the merits of the June 1st determination, because the claimant was not closely monitoring her UI Online inbox at the time that determination was issued. Consolidated Findings ## 5–7. 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.

For this reason, we remanded this case with specific questions for the review examiner to assess the claimant's testimony that she had not received an email notification informing her the June 1st determination had been placed in her UI online inbox.¹ While she made no finding about the claimant's testimony, the review examiner indicated in her credibility assessment that she found the claimant's testimony credible.

We assume from her response that the review examiner was accepting as credible the claimant's uncontested testimony that she had not received an email notifying her that the DUA had issued the June 1st determination.² Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Upon review, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

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 her communication preference. Consolidated Finding # 2. However, she did not receive an email from the DUA informing her that the June 1st determination had been placed in her UI Online inbox. Thus, she did not receive the notice that was necessary to file a timely appeal of that determination. *See Board of Review Decision 0055 8011 26* (Mar. 29, 2021).

Upon learning that there were pending issues impacting her eligibility for benefits, she immediately contacted DUA, became aware of the June 1st determination, and promptly filed her

¹ The claimant's uncontested testimony in this regard is part of the unchallenged evidence introduced at the hearing and placed into the record, and it is thus properly referred to in our decision today. *See Bleich v. Maimonides School*, 447 Mass. 38, 40 (2006); *Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training*, 64 Mass. App. Ct. 370, 371 (2005).

² Although a consolidated finding of fact directly answering the question posed in the Board's remand order would have been preferable, we decline to remand this single-party hearing a second time solely for this purpose.

appeal. *See* Consolidated Findings ## 6–8. Accordingly, she met the criteria to file a late appeal of the June 1st determination pursuant to 430 CMR 4.15(3).

The review examiner also denied the claimant’s request for a hearing on the merits of the June 1st determination on the grounds that the claimant had not filed a timely appeal of the August 10th determination informing her that her initial appeal was late. *See* Consolidated Findings ## 9, 11, and 12. However, the review examiner had no authority to hold a hearing as to the timeliness of the appeal of the August 10th determination pursuant to G.L. c. 151A, § 39(b). Because the agency had not issued a determination that the claimant’s appeal of the August 10th determination was untimely, a hearing was not requested on that issue, and the review examiner could not properly use it as a basis to deny the claimant a hearing on the June 1st determination. *See* Board of Review Decision 0080 6688 30 (Oct. 18, 2023).

We, therefore, conclude as a matter of law that the claimant has met the criteria to file her appeal of the June 1, 2023, determination beyond the statutory appeal period pursuant to 430 CMR 4.15(3).

The review examiner’s decision is reversed. The claimant is entitled to a hearing on the merits of the June 1, 2023, determination, Issue ID # 0079 4926 07.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 10, 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.

LSW/rh