

The claimant met the criteria for filing her appeal beyond 30 days pursuant to 430 CMR 4.15, as the DUA did not send her notice to check her UI Online account for a determination.

**Board of Review
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Issue ID: 0080 9130 77

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 unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On June 7, 2023, the DUA issued to the claimant a Notice of Disqualification pursuant to G.L. c. 151A, § 24(b), stating that the claimant was not eligible for benefits because she was not capable of working (Issue ID No. 0080 1092 79). The claimant appealed the determination on August 7, 2023, 61 days after the notice was issued. On August 19, 2023, the DUA issued a Notice of Disqualification, stating that the claimant did not have justification for filing a late appeal on the underlying issue. The claimant requested a hearing on this late appeal determination. Following a hearing on the merits concerning the late appeal, the review examiner affirmed the agency's determination in a decision rendered on September 6, 2023. We accepted the claimant's application for review.

A hearing on the merits of the June 7, 2023, Notice of Disqualification was denied after the review examiner determined that the claimant did not have good cause for filing her appeal past the ten-day deadline pursuant to G.L. c. 151A, § 39(b). 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 did not have good cause for filing her appeal past the ten-day deadline, is supported by substantial and credible evidence and is free from error of law, where the review examiner found that the claimant did not receive an email from the agency instructing her to check her UI Online account.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant filed a claim for unemployment benefits with the Department of Unemployment Assistance (DUA) with an effective date of 12/4/2022.

2. At the time of filing, the claimant chose to receive correspondence from DUA electronically.
3. The claimant has never filed a claim for unemployment benefits before.
4. The claimant had a baby on 5/24/23 and started to receive FMLA benefits. She stopped certifying claims for Unemployment Insurance (UI) benefits at that time.
5. On 6/7/23, DUA issued a Notice of Disqualification (Notice) to the claimant regarding her capability of working full-time.
6. The claimant was checking her Unemployment Insurance (UI) Inbox only when she received an email from DUA.
7. The claimant did not receive an email from DUA in June 2023 and did not see the Notice when it was issued.
8. The claimant received an email from DUA in August 2023 related to another document placed in her Inbox. When she checked her account on 8/7/23, she saw the Notice.
9. The claimant filed an appeal of the Notice on 8/7/23, 61 days after the Notice was issued.
10. On 8/19/23, the DUA issued a Notice of Disqualification (Second Notice) for the claimant's late appeal.
11. The claimant filed her appeal of the Second Notice on 8/20/23.

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 original 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.

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. . . .

Pursuant to G.L. c. 151A, § 39(b), the claimant had ten days to appeal the June 7, 2023, Notice of Disqualification. Since the claimant did not file the appeal until two months after the issuance of the underlying determination, we consider whether she met the criteria for filing after 30 days pursuant to the DUA regulation at 430 CMR 4.15, which provides in relevant part, as follows:

The 30-day limitation on filing a request for a hearing shall not apply where the party establishes that: . . . (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 a 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....

The review examiner found that the claimant did not receive an email from the DUA to her personal email account notifying the claimant that she had important documents in her UI Online Inbox, which required review. *See* Finding of Fact # 7. The 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 providing notice and an opportunity to be heard. Dusenbery v. United States, 534 U.S. 161, 167 (2002). Specifically, it requires “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). Since the claimant did not receive a DUA communication to look for the notice of disqualification, we believe that she did not receive the requisite notice necessary to timely appeal.

Moreover, the findings indicate that, upon learning about the disqualifying determination, the claimant promptly filed her request for a hearing. *See* Findings of Fact ## 8–9.

We, therefore, conclude as a matter of law that the claimant met the criteria for filing her appeal beyond the statutory appeal period pursuant to 430 CMR 4.15.

The review examiner’s decision is reversed. The claimant is entitled to a hearing on the merits on the underlying capability determination (Issue ID No. 0080 1092 79).

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 25, 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.

JMO/rh