

When the claimant had filed her 2020 claim for benefits, she was denied a dependency allowance for her children and a DUA representative informed her the DUA did not pay dependency allowances to claimants receiving unemployment benefits. Held the claimant was entitled to a hearing on the merits of a 2023 determination denying her a dependency allowance pursuant to 430 CMR 4.15(1,) because the DUA agent's statement directly discouraged the claimant from filing an appeal.

**Board of Review
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Issue ID: 0081 0122 91

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) concluding that the claimant lacked justification for filing a late request for a hearing. 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 April 23, 2023. On May 4, 2023, the DUA issued a determination (May 4th determination) disqualifying her from receiving a dependency allowance for her child.¹ The claimant appealed this determination on August 31, 2023, 119 days after the DUA had issued its decision. On August 31, 2023, the DUA issued a Notice of Non-Monetary Issue Determination — Late Appeal, stating that the claimant did not have good cause for submitting her appeal after the statutory deadline. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on September 28, 2023. We accepted the claimant's application for review.

The review examiner concluded that the claimant did not meet the criteria to file an appeal of the May 4th determination beyond 30 days pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.15 and was, therefore, not entitled to a hearing on the merits of that decision. 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 was not entitled to a hearing on the merits of the determination at issue because she had not shown she was discouraged from filing an appeal by a DUA representative, 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 Issue ID # 0080 0904 46.

1. The claimant's preferred language is Spanish.
2. The claimant filed a claim for unemployment benefits with an effective date of April 23, 2023 (2023-01 claim). The claimant had previously filed claims for unemployment benefits in 2016, 2020, 2021, and 2022.
3. The claimant elected to receive electronic correspondence from the Department of Unemployment Assistance (DUA). The claimant provided the DUA with her correct email address.
4. The claimant has two children.
5. In 2020, the claimant spoke with a DUA representative regarding pandemic unemployment benefits. That representative indicated that the claimant would be ineligible to receive a dependency allowance for her children while collecting unemployment benefits because "the government does not give support for families".
6. On May 4, 2023, the DUA issued the claimant a Notice of Disqualification (Notice) under Section 29(c) of the Law.
7. Instructions accompanying the First Notice explained the means by which the claimant could request a hearing on the merits of the determination and the time parameters in which such request for a hearing had to be filed to be considered timely.
8. On May 4, 2023, the claimant received the Notice when it was properly delivered to her UI Online inbox.
9. The claimant viewed her UI Online inbox on May 5, 2023.
10. In approximately early May 2023, the claimant spoke to another DUA representative, who informed the claimant that she had been misinformed in 2020 regarding dependency allowances. That representative further advised the claimant that she may have been found ineligible to receive a dependency allowance because the claimant "made a mistake" and indicated on her application for unemployment benefits that she was not responsible for financially supporting her children.
11. The claimant reopened her 2023-01 claim after a break from signing on June 25, 2023.
12. The claimant viewed her UI Online inbox on June 25, 2023, June 28, 2023, July 6, 2023, July 18, 2023, and August 24, 2023.
13. The claimant did not appeal the Notice on any of those dates for unknown reasons.

14. On August 31, 2023, 119 days after its initial determination, the claimant submitted an online appeal to the determination.

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. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portion of Finding of Fact # 10 which indicates that the claimant's conversation with the DUA representative occurred in early May, 2023, as inconsistent with the uncontested evidence of record. 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 her appeal of the May 4th determination more than 100 days after it was issued. Findings of Fact ## 6 and 14. DUA regulations specify circumstances that constitute good cause for filing a late appeal within the meaning of G.L. c. 151A, § 39(b), and, under a few circumstances, allow 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.

After the DUA found the claimant ineligible for a dependency allowance under her 2020-01 claim for benefits, the claimant contacted the DUA, seeking further explanation of the determination that she received. The DUA representative with whom the claimant spoke at that time informed her that the DUA did not pay a dependency allowance to individuals collecting unemployment benefits. Finding of Fact # 5. Acting in reliance on this misinformation, the claimant believed it would have been futile to appeal the May 4th determination denying her request for a dependency allowance under her 2023-01 claim.² See Findings of Fact ## 5 and 6. It was not until the claimant spoke with another DUA representative that she learned that the previous representative with whom she spoke in 2020 had given her incorrect information. See Finding of Fact # 10.

As the claimant believed, based on incorrect statements made by a DUA representative, that requesting a hearing on the May 4th determination would have been futile, we conclude that the record shows a DUA agent directly discouraged the claimant from taking further action on that determination. Accordingly, pursuant to 430 CMR 4.15(1), the claimant has shown the 30-day limitation on filing a request for a hearing should not apply in this case.

We, therefore, conclude as a matter of law that the claimant has met the criteria to file her appeal of the May 4, 2023, determinations beyond the statutory appeal period pursuant to 430 CMR 4.15(1).

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of Issue ID # 0080 0904 46.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 29, 2024



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

² The claimant's uncontested testimony in this regard is part of the unchallenged evidence introduced at the hearing and placed in to 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).

**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