

**There is no agency record of the employer being sent a lack of work notice on or around September 12, 2023. The employer received and timely completed a lack of work notice and fact-finding questionnaire on September 28, 2023. Therefore, pursuant to G.L. c. 151A, §§ 38(a), (b) and 38A, the employer shall be a party to future proceedings on the claim, and it may be relieved of charges in the event of any wrongful payment of benefits.**

**Board of Review  
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**Issue ID: 0081 1989 45**

### Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) denying the employer party status and relief of benefit charges. 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 September 3, 2023. The agency sent the employer a questionnaire to complete regarding the claimant's separation on September 28, 2023. The employer returned the completed questionnaire to the DUA on the same day. In a determination issued on October 26, 2023, the agency determined that the employer's response to the questionnaire was not timely and that there was no good cause for the delay. The employer appealed, and its agent attended the hearing. In a decision rendered on March 21, 2024, the review examiner affirmed the agency's determination under G.L. c. 151A, § 38(b), and, as a result, the employer was no longer a party to further proceedings and would not be relieved of benefit charges. We accepted the employer's application for review.

The issue on appeal is whether the review examiner's decision, which concluded that the employer was no longer a party to further proceedings and would not be relieved of benefit charges, pursuant to G.L. c. 151A, § 38(b), because the employer's response to a request for information was late, is supported by substantial and credible evidence and is free from error of law.

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 employer's appeal.

### Findings of Fact

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

1. The claimant filed an unemployment insurance claim on 9/6/23.
2. On 9/12/23, DUA sent a Lack of Work Notice to the employer, due 9/25/23.

3. On 9/12/23, DUA also sent a Notice of Confirmation of Employment to the employer, due 9/25/23.
4. The employer's correspondence preference is U.S. Mail.
5. DUA sent copies of the Lack of Work Notice and the Notice of Confirmation of Employment to the employer's UI Online inbox on 9/12/23.
6. The owner did not fill out and return the Notice of Confirmation of Employment.
7. The Lack of Work Notice says, in part, "The Claimant listed above has applied for Regular UI unemployment benefits on 9/6/2023 and you have been listed as a recent employer on this claim. The Claimant has indicated they had worked for you from 10/1/2022 to 3/31/2023 and listed lack of work as the reason for separation."
8. On the Lack of Work Notice is room for Employer Comments and a space to indicate whether the claimant separated due to lack of work/layoff.
9. The Lack of Work Notice also states, "If the claimant did not separate due to lack of work, provide the reason for separation below..." Options include but are not limited to quit, discharged, LOA, and still employed.
10. The owner filled out the Lack of Work Notice and submitted it to DUA via UI Online on 9/28/23. She reported that the claimant quit. In the Employer Comments section, she wrote, "The claimant quit due to family reasons. The claimant did not work for me for the stated dates."
11. On 9/28/23, DUA sent the employer a Quit Fact-Finding Questionnaire, which the owner completed and submitted in UI Online that day.
12. The owner did not complete the Lack of Work Notice timely because she received a lot of documents from DUA and did not understand a lot of them.

### 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 Findings of Fact ## 2, 3, 5, 6, and 12 as inconsistent with agency records of correspondence sent to the employer. 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 employer did not have good cause for its failure to timely respond to the agency's request for information.

G.L. c. 151A, § 38, provides, in relevant part, as follows:

(a) Benefit claims shall be filed at the employment office at which the claimant has registered as unemployed. The commissioner shall prescribe the form, the time, and the manner in which such claims, other than disputed claims, shall be filed. The commissioner shall also prescribe the form and manner in which reports on claims required from the claimant and the employing units shall be presented . . . . Such procedure shall be designed to ascertain the substantive rights of the parties involved, without regard to common law or statutory rules of evidence and other technical rules of procedure.

For the purpose of this section, the commissioner shall notify so many of the claimant's base period employers to report wages paid such individual during the base period as he finds necessary to make a proper determination on said claim. Each employer shall thereupon promptly report to the commissioner, in such form and manner as the commissioner prescribes, such information as may be necessary to determine a claimant's benefit rights under this chapter. If an employer fails to respond to the commissioner's notice under this section within ten days after such notice was mailed to him, the commissioner shall promptly determine the matter based on the available information. If an employer fails to respond to the commissioner's notice under this subsection without good cause the employer shall have no standing to contest such determination, and any benefits paid pursuant to such a determination shall remain charged to the employer's account . . . .

(b) Notice of a claim so filed shall be given promptly by the commissioner or his authorized representative to the most recent employing unit of the claimant and to such other employing units as the commissioner may prescribe. If such employing unit has reason to believe that there has been misrepresentation or has other reasons which might affect the allowance of said claim, or has been requested by the commissioner to furnish any other pertinent information relating to said claim, it or he shall return the said notice to the indicated employment office with the reasons or information stated thereon within eight days after receipt, but in no case more than ten days after mailing of said notice, . . . Failure without good cause to return said notice and information within the time provided in this section or prescribed by the commissioner shall bar the employing unit from being a party to further proceedings relating to the allowance of the claim . . . .

Also relevant in this appeal is G.L. c. 151A, § 38A, which provides as follows:

(a) If the director, or the director's authorized representative, determines, after providing written or electronic notice to the employer, that a payment of benefits was made because the employing unit, or an agent of the employing unit, was at fault for failing to respond timely or adequately to any request of the department for information relating to the claim for benefits, then: (i) the employing unit, except for employing units making payments into the Unemployment Compensation Fund under section 14A, shall not be relieved of charges on account

of any such payment of benefits; and (ii) if the employing unit makes payments into the Fund under section 14A, it shall not be relieved from reimbursing the fund on account of any such payment of benefits. For purposes of this subsection, a response shall be considered inadequate if it fails to provide sufficient facts to enable the department to make the proper determination regarding a claim for benefits. A response shall not be considered inadequate if the department fails to ask for all necessary information, except in any case where there has been a failure to respond.

The adequacy of the employer's response to the confirmation of employment notice is not at issue here, as the agency has not determined that the response was inadequate, and there is nothing in the record to indicate that it was inadequate. The only matter at issue is the timeliness of the employer's response.

G.L. c. 151A, §§ 38(a) and (b), provide that a failure by the employer to timely respond to a request for information by the agency without good cause can result in loss of party status. The review examiner found that the employer had failed to timely respond to a Lack of Work Notice issued on September 12, 2023. However, there is no indication in UI Online, the DUA's electronic recordkeeping system, that the DUA transmitted any correspondence to the employer on or around September 12, 2023. As the employer cannot have failed to timely respond to correspondence that it was never sent, the review examiner erred in finding that the employer did not timely respond to the DUA's request for information.

The employer received and timely completed a Lack of Work Notice and a Fact-Finding Questionnaire on September 28, 2023. Findings of Fact ## 10 and 11. Accordingly, the review examiner improperly barred the employer from being a party to further proceedings.

We, therefore, conclude as a matter of law that, pursuant to G.L. c. 151A, §§ 38(a), (b) and 38A, the employer timely responded to the agency's request for information.

The review examiner's decision is reversed. The employer may participate as a party in future proceedings relating to the allowance of this claim, and it may be relieved of charges in the event of any wrongful payment of benefits.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 10, 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](http://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