

Where the claimant filed an appeal more than 30 days after a disqualifying determination was issued, she is not entitled to a hearing on the merits because she did not demonstrate that she was permitted to file a late appeal pursuant to 430 CMR 4.15. The record shows that she had viewed her UI Online inbox several times on the date the determination was issued and six days later. Nor did she prove that a DUA agent discouraged her from appealing, where the agent merely responded to her question about closing her claim, and the conversation took place three weeks before DUA issued its determination.

**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: 0081 5047 75

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 in connection with a determination to deny benefits. A hearing on the merits was denied on the ground that the claimant did not show that she met any of the criteria under 430 CMR 4.15, to file an appeal beyond the statutory deadline set forth under G.L. c. 151A, § 39(b).

The claimant had filed a claim for unemployment benefits, effective July 2, 2023. On August 24, 2024, the DUA issued a Notice of Disqualification to the claimant denying benefits pursuant to G.L. c. 151A, § 25(e) (§ 25(e) determination). The claimant appealed this § 25(e) determination to the DUA Hearings Department on November 16, 2023, 84 days later. On December 7, 2023, the DUA issued a determination denying a hearing on the merits, stating that the claimant did not have justification for submitting her appeal after the statutory deadline (late appeal determination). The claimant timely filed an appeal of the late appeal determination.

Following a hearing on the merits of the late appeal determination, the review examiner affirmed the agency's determination in a decision rendered on February 21, 2024. The claimant sought review by the Board, which affirmed, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On October 3, 2024, pursuant to a Joint Motion, the District Court ordered the Board to obtain further evidence, including the admission of screenshots of the claimant's inbox from the DUA's UI Online database, which show inbox views on relevant dates. Consistent with this order, we remanded the case to the review examiner. The claimant attended the remand hearing with counsel. Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's failure to check her UI Online inbox did not meet the allowable criteria to file a late appeal, is supported by substantial and credible evidence and is free from error of law.

After reviewing the entire record, including the recorded testimony and evidence from the original and remand hearings, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we affirm the review examiner's decision.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant filed a claim for unemployment benefits with the Department of Unemployment Assistance (DUA) effective July 2, 2023.
2. The claimant had filed a Massachusetts unemployment claim and received benefits, prior to the subject claim.
3. The claimant elected to receive electronic correspondence from the DUA and provided her correct email address.
4. On August 4, 2023, the claimant began working for a new employer.
5. On or about August 4, 2023, the claimant contacted the DUA and asked a representative if there was anything she needed to do to close her claim since she had returned to work. The representative told the claimant she did not need to do anything to close out the claim. The claimant and the representative did not discuss the subject disqualification. The subject disqualification had yet to issue.
6. On August 24, 2023, the DUA electronically issued to the claimant a Notice of Disqualification (First Notice) in issue ID #0080 7583 94-01. The DUA sent an email to the claimant's email address informing her that she had correspondence in her UI Online inbox. The Notice stated that the claimant was disqualified from benefits pursuant to Section 25(e)(1) of the Law. The Notice included instructions on how to appeal the decision and the deadline for filing an appeal.
7. On August 24, 2024, the claimant received the First Notice when it was placed in her UI Online inbox.
8. The claimant checked her UI Online inbox once on August 24, 2023, and four times on August 30, 2023. It is unknown if the claimant read the First Notice when she logged into her UI Online inbox on these dates.
9. After August 30, 2023, the claimant did not log into her UI Online account until October 26, 2023.
10. The claimant was not told by anyone at the DUA that she should not file an appeal to the First Notice.

11. The reasons why the claimant did not initially file an appeal to the First Notice are unknown.
12. The claimant stopped logging into her UI Online account because she was working full-time and had never requested benefits.
13. On October 26, 2023, after separating from her employer, the claimant reopened her claim for unemployment benefits, with an effective date of October 15, 2023.
14. On November 6, 2023, the claimant contacted the DUA after her request for weekly benefits was denied. A representative told the claimant that she had earned sufficient wages to be eligible for benefits, and the subject determination was no longer disqualifying.
15. The claimant appealed the First Notice electronically on November 16, 2023, 84 days after it was issued.
16. On December 7, 2023, the DUA electronically issued the claimant a Notice of Disqualification (Second Notice) in issue ID # 0081 5047 75-01, finding there was no justification for the claimant's untimely appeal.
17. On December 11, 2023, the claimant appealed the Second Notice electronically.

Credibility Assessment:

The claimant's testimony was conflicting, vague and evasive. The claimant initially maintained she never received the First Notice, and, before reopening her existing claim on October 26, 2023, was unaware of the subject disqualification. Subsequently, the claimant acknowledged that the DUA correctly issued the First Notice to the claimant's UI Online inbox on August 24, 2023. Indeed, the claimant herself submitted into evidence images of the contents of her UI Online inbox, which show the First Notice was in the claimant's inbox on August 24, 2023. Further, despite the claimant's UI Online account event log showing that the claimant's inbox was checked on August 24, 2024, the day the First Notice issued, and checked four times on August 30, 2023, the claimant initially maintained that she stopped checking her UI Online inbox once she returned to work on August 4, 2023, and adamantly denied checking her inbox on August 24, 2023 and August 30, 2023. However, the claimant also denied anyone else having access to her UI Online account and password. When asked about this contradiction, the claimant contended it was possible that she logged into her account, but that she did not check her inbox, or if she did check her inbox, she did not read the First Notice, due to her own technological difficulties.

The claimant maintained that she contacted the DUA on or about August 4, 2023, and asked a representative if there was anything she needed to do to close out her

claim since she had returned to work, and the representative advised her that she did not need to do anything. The claimant acknowledged she and the representative did not discuss the subject disqualification. Indeed, the claimant and the representative could not have discussed the subject disqualification since it was issued weeks after the claimant's phone call. Therefore, it is concluded that the claimant's contention that she was directly discouraged by a DUA employee from filing an appeal in August 2023, is not credible.

Given how the claimant's contentions are not corroborated by the substantial and credible evidence in the record, it is concluded that it is unknown if the claimant read the First Notice at the time that it was issued, and that the reasons why she initially did not submit an appeal to it are also unknown.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact and credibility assessment except as follows. The portion of Consolidated Finding # 4 stating that the claimant *began* working for a new employer on August 4, 2023, does not accurately reflect the claimant's testimony, which indicated that she had already started working before that date.¹ In adopting the remaining findings, we deem 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. We also agree with the review examiner's legal conclusion that the claimant did not meet the criteria to file a late appeal.

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 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. . . .

However, the DUA allows parties to file a late appeal under certain limited circumstances. Specifically, if an appeal is filed beyond 30 days, 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 The claimant testified that she had been displaced from her prior job "literally, like two weeks" before she started a new job. We have supplemented the findings of fact as necessary with the unchallenged evidence before the review examiner. 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).

- (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.

One argument that the claimant puts forth on appeal is that the regulation permits her to file her appeal beyond 30 days because DUA agents discouraged her from timely requesting a hearing. 430 CMR 4.15(1). The record shows that she spoke to DUA agents on August 4 and November 6, 2023. *See Consolidated Findings ## 5 and 14.* As for the August 4, 2023, call with the DUA agent, we agree that the claimant has not shown that she was discouraged from timely appealing the § 25(e) determination.

First, it belies common sense to believe that an agent discouraged her from appealing a determination that had yet to be issued. The claimant's conversation with the agent was on August 4, 2023. The DUA did not render its § 25(e) determination until August 24, 2023. *See Consolidated Findings ## 5–7.*

Second, during the August 4, 2023, call, the claimant merely asked how to close her unemployment claim because she had returned to work, and the agent responded that she did not need to do anything, and that it would close itself out. *See Consolidated Finding # 5.* We see nothing misleading or discouraging about this exchange, as it was directly responsive to the claimant's question. During the remand hearing, the claimant's counsel suggested that this conversation led the claimant to believe that no further action on her claim was necessary. We reject this argument. It appears that, at the time, the claimant did not believe this either, as UI Online records show that she logged into her UI Online account several times later that month. Specifically, the claimant viewed her UI Online inbox on August 24, 2023, and four times on August 30, 2023. *See Consolidated Finding # 8.*

As for the next call with a DUA agent on November 6, 2023, we agree that this conversation could lead the claimant to believe that it was no longer necessary to appeal the § 25(e) determination. She had re-opened her claim on October 26, 2023, and was told that she had earned sufficient wages to be eligible for benefits, notwithstanding the August 24, 2023, § 25(e) determination. *See Consolidated Finding # 14.*² Indeed, UI Online shows that the claimant was eligible for benefits after re-opening her claim.

Because this conversation on November 6, 2023, could reasonably discourage the claimant from filing an appeal, we decline to penalize the claimant for the additional 10 days it took her to appeal the August 24, 2023, § 25(e) determination, which she ultimately filed on November 16, 2023. *See Consolidated Finding # 15.*

² A disqualification imposed under G.L. c. 151A, § 25(e), is “for the period of unemployment next ensuing and until the individual has had at least eight weeks of work and has earned an amount equivalent to or in excess of 8 times the individual's weekly benefit amount after the individual has left work ...”

We also find no merit to the claimant's second argument, which seems to be that she is permitted to file a late appeal pursuant to 430 CMR 4.15(2), because she did not receive the DUA's § 25(e) determination until learning about it after speaking with the DUA agent on November 6, 2023. As noted in the credibility assessment, the claimant offered various, conflicting explanations during the remand hearing about why she did not know about the § 25(e) determination when it was issued on August 24, 2023. Namely, she testified that she did not look in her UI Online inbox at all in August, that she may have logged in but did not check her inbox, or that, if she did, she did not read the determination notice. Such inconsistent testimony renders all of these explanations suspect. Ultimately, the review examiner found that she looked in her inbox on August 24 and 30, 2023. *See Consolidated Finding # 8.* We believe that this finding is reasonable in relation to the evidence presented. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996).

Finally, the claimant argues that she could not download the § 25(e) determination to be able to read it because she could not do so using her mobile phone. If the claimant was unable to read the § 25(e) determination on either date due to technical problems, we see no reason why she could not have contacted DUA for assistance, as she demonstrated she was fully capable of doing on August 4th and November 6th. Nothing in the record suggests that she tried to call DUA on August 24 or 30, 2023, when she viewed her inbox.

In any case, it is worth noting that, even if we were to reach a different result, allowing a hearing on the merits of the § 25(e) determination, and even if, after a hearing, she were to prevail in reversing that determination, the claimant would not be able to collect benefits during the period between her original claim effective date and the date she reopened the claim. UI Online shows that the claimant did not file any weekly certifications for benefits under her 2023-01 claim until it was re-opened as of the week beginning October 15, 2023. Since, at that point, she had apparently earned enough wages at her new job to eliminate the earlier § 25(e) penalty, her failure to timely contest the disqualification imposed by the § 25(e) determination has no effect.

We, therefore, conclude as a matter of law that the claimant failed to meet the criteria under 430 CMR 4.15, to file an appeal beyond the statutory appeal period, as required by G.L. c. 151A, § 39(b).

The review examiner's decision is affirmed. The claimant is not entitled to a hearing on the merits of the § 25(e) determination in Issue ID # 0080 7583 94.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 30, 2025



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.

AB/rh