

**The claimant intended to timely appeal a disqualifying determination on the same day it was issued, but mistakenly appealed a monetary determination. The Board declined to penalize her for this mistake and deemed her appeal to have been timely filed pursuant to G.L. c. 151A, § 39(b).**

**Board of Review  
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**Issue ID: 0081 7865 32**

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 prior determination issued on November 10, 2023, which denied her benefits. 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 June 4, 2023. On November 10, 2023, the DUA issued a determination finding her ineligible for benefits due to not being capable of, available for, or actively seeking work (November 10<sup>th</sup> Notice). The claimant filed a request for a hearing on December 26, 2023. On January 23, 2024, the DUA sent the claimant another determination informing her that she did not have a qualifying reason for filing a late appeal (late appeal determination). The claimant appealed the latter determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's determination and denied a hearing on the merits of the November 10<sup>th</sup> determination in a decision rendered on April 12, 2024. We accepted the claimant's application for review.

A hearing on the merits was denied after the review examiner determined that the claimant failed to meet the late appeal criteria under G.L. c. 151A, § 39(b) and 430 CMR 4.15. 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 failed to meet the criteria to file a late appeal where she appealed the incorrect determination, 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. The claimant filed a new claim for unemployment benefits, effective for the week beginning June 4, 2023 (2023-01 claim).

2. Upon filing the 2023-01 claim, the claimant elected to receive correspondence electronically.
3. On November 10, 2023, the Department of Unemployment Assistant (DUA) sent the claimant an email that a Notice of Disqualification (Notice) was available for her review in her UI Online Inbox.
4. The Notice notified the claimant that she had been disqualified from receiving benefits for the week beginning August 27, 2023, and thereafter.
5. Written instructions printed on the Notice notified the claimant of the means by which the claimant could request a hearing on the matter and the time parameter which such an appeal had to be filed to be considered timely.
6. The claimant received the Notice on November 10, 2023, when it was issued to the claimant's UI Online Inbox.
7. The claimant was in the hospital for two days in November 2023.
8. The claimant checked her UI Online Inbox on November 10, 2023, November 21, 2023, November 27, 2023, December 7, 2023, December 14, 2023, and December 18, 2023.
9. The claimant read the Notice.
10. The claimant, through her own mistake, filed an appeal of a monetary Notice on November 10, 2023, instead of appealing the Notice.
11. The claimant did not appeal the Notice timely due to her own mistake in filing an appeal.
12. On December 26, 2023, the claimant filed an appeal of the Notice.
13. December 26, 2023, is the 46th calendar day following November 10, 2023.
14. The claimant did not speak to her employer about the Notice.
15. The claimant was not discouraged from filing an appeal by anyone at the DUA.
16. The claimant was not harassed or threatened related to filing an appeal of the Notice.

### 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. 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.

The unemployment statute sets forth a time limit for requesting a hearing on an eligibility Notice issued by the DUA. G.L. c. 151A, § 39(b), provides, in pertinent part, as follows:

Any interested party notified of a Notice 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. . . .

By regulation, the DUA allows appellants to file their appeal beyond 30 days, if they meet a narrow set of criteria. *See* 430 CMR 4.15.

The claimant reviewed her inbox on November 10<sup>th</sup> and read the November 10<sup>th</sup> Notice issued by the DUA on that date. *See* Findings of Fact ## 8 and 9. She had mistakenly appealed a monetary determination on that date instead of the November 10<sup>th</sup> Notice. *See* Finding of Fact # 10. After identifying her mistake, the claimant filed an appeal of the November 10<sup>th</sup> Notice on December 26, 2023. *See* Finding of Fact # 12.

In addressing similar situations, the Board has declined to penalize a claimant for inadvertently filing an appeal of the incorrect determination where the record shows that the claimant intended to file an appeal of the correct determination and promptly filed such an appeal upon learning of the mistake. *See, e.g.*, Board of Review Decision N6-H8V4-8KLD (May 19, 2022).

UI Online, the DUA's electronic record-keeping system, shows that the monetary determination that the claimant actually appealed on November 10 was issued on November 3, 2023. This shows that both determinations were issued in close proximity to each other. Consistent with Board precedent, we decline to penalize her for formally appealing the wrong issue. Further, as the appeal was filed on November 10, 2023, within the 10-day appeal window of the November 10<sup>th</sup> determination, we deem the claimant's appeal of the present issue to have been timely filed.

We, therefore, conclude as a matter of law that that the claimant is deemed to have timely filed her appeal within the statutory deadline pursuant to G.L. c. 151A § 39(b).

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the November 10<sup>th</sup> Notice, Issue ID # 0081 0405 11.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 28, 2024**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, 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.

BGM/rh