

**The claimant missed the 10-day deadline to appeal a determination to deny benefits because of her failure to attend a RESEA review. Although she asserted that she never received DUA's email to look in her UI Online inbox, the review examiner reasonably rejected this as not credible. Moreover, DUA records show that the claimant looked in her inbox six days after the determination was issued. Thus, she did not establish that her late appeal was because she did not get notice of the determination. Held she did not have good cause to miss the statutory appeal deadline set forth under G.L. c. 151A, § 39(b).**

**Board of Review  
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Chairman  
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Member  
Michael J. Albano  
Member**

**Issue ID: 0081 9241 48**

### 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. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On November 27, 2023, the DUA issued a Notice of Disqualification to the claimant, denying benefits pursuant to G.L. c. 151A, § 25(a), as of November 19, 2023, due to her failure to complete a Reemployment Services Eligibility Assessment (RESEA) review (RESEA determination). The claimant appealed this RESEA determination to the DUA hearings department on January 10, 2024, 44 days after the determination was issued. On January 12, 2024, the DUA issued a determination denying a hearing on the merits of the RESEA determination, 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 March 16, 2024. We accepted the claimant's application for review.

A hearing on the merits of the RESEA determination was denied pursuant to G.L. c. 151A, § 39(b), after the review examiner determined that the claimant did not meet any of the criteria to file an appeal beyond the statutory deadline as allowed under 430 CMR 4.15. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to make subsidiary findings of fact and a credibility assessment pertaining to whether the claimant had received notice of the RESEA determination. Thereafter, the review examiner issued his consolidated findings of fact and credibility assessment. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's failure to look at DUA's RESEA determination notice did not constitute good cause to file her appeal beyond the statutory filing deadline, is supported by substantial and credible evidence and is free from error of law.

## Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment 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 September 24, 2023.
2. The claimant elected to receive correspondence from the DUA via email correspondence.
3. On November 27, 2023, the claimant received a Notice of Disqualification (the Notice) citing Massachusetts General Law Chapter 151A, § 25A.
4. DUA records show that the claimant's email has been verified by the DUA.
5. The claimant uses her phone to check her email.
6. On November 27, 2023, the claimant received an email notification regarding time sensitive information in her UI Online account.
7. The claimant did not view the Notice when it was issued.
8. The Notice contained appeal instructions and an appeal form.
9. The claimant was unaware of her appeal rights.
10. On January 10, 2024, the claimant spoke to a representative with the DUA, who made her aware of the Notice and the need to file an appeal.
11. At no point did a representative discourage the claimant from appealing the Notice.
12. On January 10, 2024, the claimant appealed the Notice. The claimant's request for appeal was 44 days after the determination issued.
13. On January 12, 2024, the DUA issued the claimant a Notice of Disqualification citing Massachusetts General Law Chapter 151A, § 39 denying the late appeal, which the claimant appealed on January 12, 2024.

## Credibility Assessment:

The claimant's testimony established that she uses her phone to check her personal email account. The claimant testified that she has issues receiving emails in general not just from the DUA. The claimant testified that she did not receive an email in

her personal email account on or around November 27, 2023, informing her that new correspondence from the DUA requiring her attention had been placed in her UI Online inbox. However, this testimony lacks credibility, as the claimant testimony established that she did not see the Notice that DUA records show was placed in her UI Online inbox on November 27, 2023. The claimant testified that she checks her unemployment account almost daily. If the claimant was checking her UI Online account daily, then she would have been aware of the Notice at the time it was issued or shortly thereafter. The claimant's testimony established that she did not become aware of the Notice until after speaking to a Masshire representative about her RESEA requirements. As the claimant's testimony that she consistently checks her UI Online inbox lacks credibility, it is unlikely that the claimant was consistently checking her email for correspondence from the DUA.

### 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. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems 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. As discussed more fully below, we also agree with the review examiner's legal conclusion that the claimant has not shown good cause for filing her 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) 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.

In this case, the claimant filed her appeal on January 10, 2024, 44 days after the determination date. Consolidated Finding # 12. She has asserted that she never received a DUA email notification to look for the notice in her inbox, effectively arguing that she is allowed to file the late appeal pursuant to 430 CMR 4.15(3), because she did not know about the determination. However, the review examiner rejected this assertion as not credible, finding that she received the email notification on November 27, 2023. Consolidated Finding # 6.

Even if we were to assume, *arguendo*, that the claimant did not receive this email, agency records shows that she looked in her UI Online inbox on December 3, 2023, six days after the RESEA determination was issued. *See* Exhibit 5.<sup>1</sup> Had she opened and read the notice of the RESEA determination, she would have become aware of the disqualification and what she needed to do to appeal. December 3, 2023, was still well within the 10-day appeal period. For whatever reason, she did not view the notice. This does not mean that she did not receive the determination.

We, therefore, conclude as a matter of law that the claimant failed to meet the criteria under 430 CMR 4.15, for filing 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 her RESEA determination in Issue ID # 0081 5598 73.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 27, 2024**



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**

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<sup>1</sup> Exhibit 5 is a screen shot from the DUA's electronic record-keeping system, UI Online. It is the claimant profile screen for her 2023-01 claim, and it shows that she viewed her inbox on December 3, 2023. Although not explicitly incorporated into the review examiner's findings, this exhibit is part of the unchallenged evidence introduced at the hearing and placed in 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).

**(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.

AB/rh