

**The claimant mistakenly appealed a monetary determination instead of a disqualifying separation determination within the deadline for appealing the separation determination. Where the substance of her monetary appeal addressed her reason for separation, and she promptly filed the correct appeal upon learning of her mistake, the Board deemed the separation appeal to have been timely filed pursuant to G.L. c. 151A, § 39(b). She is entitled to a hearing on the merits of her disqualifying separation determination.**

**Board of Review  
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**Issue ID: 0081 9971 82**

### 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 reverse.

On December 13, 2023, the DUA issued a Notice of Disqualification to the claimant, denying benefits pursuant to G.L. c. 151A, § 25(e)(1) (separation determination). The claimant appealed this separation determination to the DUA hearings department on January 19, 2024, 37 days after the determination was issued. On February 2, 2024, the DUA issued a determination denying a hearing on the merits of the separation determination, stating that the claimant did not have an allowable reason for submitting her appeal after the statutory deadline (late appeal determination). The claimant timely appealed 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 May 23, 2024. We accepted the claimant's application for review.

A hearing on the merits of the separation 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 under 430 CMR 4.15, to file an appeal beyond the statutory deadline. 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 mistakenly appealed a different 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 appealing the wrong determination by mistake was not a basis to allow a late appeal, 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 effective November 12, 2023.
2. The claimant elected to receive correspondence from the DUA via email correspondence.
3. On December 13, 2023, the claimant received a Notice of Disqualification ("the Notice") citing Massachusetts General Law Chapter 151A, § 25(e)(1).
4. On December 13, 2023, the claimant was issued an email regarding time sensitive correspondence in her UI Online inbox.
5. The claimant viewed the Notice when it was issued.
6. The Notice contained appeal instructions and an appeal form.
7. The claimant was aware of her appeal rights and the deadline of ten days to file an appeal.
8. On December 15, 2023, the claimant filed an appeal for a separate Monetary – Standard Determination issue (Issue ID: 0081 7912 26-02).
9. The appeal was filed via U.S. postal mail and was received by the DUA on December 26, 2023.
10. On January 19, 2024, the claimant called into the DUA to check for an update on the appeal status. The claimant was asked if she intended to file an appeal on the Monetary issue or the Quit issue. The claimant stated that she meant to file an appeal on the Quit issue.
11. The claimant was instructed to file an appeal of the Quit issue and withdrew her appeal of the Monetary issue.
12. On January 19, 2024, the claimant appealed the Notice. The claimant's request for appeal was 37 days after the determination issued.
13. At no point did a representative discourage the claimant from appealing the Notice.
14. On March 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 March 12, 2024.

Credibility Assessment:

The claimant testified that she viewed the Notice when it was issued. The claimant testified that she was aware of her appeal rights and the deadline of ten days to file an appeal. The claimant's testimony established that at or around the time the Notice was issued, the claimant received a monetary determination. The claimant testified that she mistakenly filed an appeal of this monetary determination, when she meant to file an appeal of the Notice regarding the Massachusetts General Law Chapter 151A, § 25(e)(1) issue. The claimant's testimony is corroborated by DUA records found in the claimant's appeal of a Monetary issue (Issue ID: 0081 7912 26-02). The information found in this issue shows that the claimant filed an appeal of the Monetary issue on December 15, 2023, when she submitted a request via U.S. postal mail. The notes under this issue show that the claimant called into the DUA for an update on her appeal status and spoke to a representative on January 19, 2024. At this point, the claimant was informed that she had filed an appeal of the monetary determination and not the Quit issue she had intended to appeal. DUA records show that the claimant withdrew her appeal request for the Monetary determination, and then filed an appeal of the Notice of Disqualification citing Massachusetts General Law Chapter 151A, § 25(e)(1).

DUA records show that the claimant submitted a request for an appeal of the Monetary issue via U.S. postal mail on December 15, 2023. DUA records show that the appeal was received on December 26, 2023. This appeal would have been considered timely. Had that claimant given full attention to each determination, which are identified by an [sic] unique issue identification number and different citations of the law on each, and appealed the correct one, the claimant would have timely appealed the intended 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 consolidated 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 consolidated findings of fact except as follows. The date of March 12, 2024, which appears twice in Consolidated Finding # 14 as both the DUA's late appeal determination date and the claimant's appeal date, is an error, as it conflicts with dates appearing in Exhibit 2<sup>1</sup> and Consolidated Finding # 8, respectively. 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. 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 of the separation determination.

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<sup>1</sup> Exhibit 2 is the DUA's late appeal determination, which is dated February 2, 2024. 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).

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 . . . .

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 review examiner concluded that the claimant did not meet the criteria for failing to file a timely appeal of the separation determination, where she had instead appealed a monetary determination. *See* Consolidated Finding # 8. 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-H67D-F38K (Oct. 13, 2021), *and* Board of Review Decision 0021 9945 62 (Aug. 21, 2017).

In the present case, the consolidated findings show that, on December 15, 2023, within the 10-day statutory appeal period of the December 13, 2023, separation determination, the claimant appealed a monetary determination in Issue ID # 0081 7912 26. *See* Consolidated Findings ## 8 and 9. The DUA's electronic record-keeping system, UI Online, shows that the substance of her monetary determination appeal pertained to her reason for separation. Thus, it is evident that, on December 19, 2023, she intended to appeal her separation determination. *See* Consolidated Finding # 10.

Moreover, once she learned of her mistake after speaking with a DUA agent on January 19, 2024, she promptly appealed the separation determination the same day. *See* Consolidated Findings ## 10 and 12. As in our prior decisions, we decline to penalize her for this error.

We, therefore, conclude as a matter of law 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 separation determination, dated December 13, 2023, in Issue ID # 0081 5377 66.

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

AB/rh