

The review examiner found that the claimant filed his original appeal of a disqualifying monetary determination through the U.S. Postal Service within ten days of it being issued, even though it is not known whether the DUA received it. Thus, the appeal was timely filed pursuant to G.L. c. 151A, § 39(b), and he is entitled to a hearing on the merits.

**Board of Review
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Issue ID: 0082 1370 52

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 Monetary Determination issued on May 27, 2020. 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 April 19, 2020. On May 27, 2020, the DUA issued a Monetary Determination (May 27th Notice) finding him ineligible for benefits. The claimant filed an appeal of the May 27th Notice with the DUA hearings department on February 6, 2024. On February 22, 2024, the DUA sent the claimant a Notice of Disqualification informing him that he did not have a qualifying reason or filing a late appeal (late appeal determination). Following a hearing on the merits of the late appeal determination, the review examiner affirmed and denied a hearing on the merits of the May 27th Notice in a decision rendered on April 11, 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 for late appeals because the DUA did not receive the appeal the claimant sent via the U.S. Postal Service within the prescribed ten-day period, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed a claim for unemployment benefits on April 20, 2020, with an effective date of April 19, 2020.

2. The claimant elected to receive correspondence from the Department of Unemployment Assistance (DUA) via electronic communication.
3. The claimant regularly checked his UI Online account for new correspondence in his UI Online account inbox.
4. On May 27, 2020, the DUA issued the claimant a Monetary Determination (the Notice) that stated the claimant was not monetarily eligible for UI benefits.
5. The Notice was sent to the claimant along with directions that an attached Appeal Request form must be submitted within 10 calendar days of the date of issuance of the Notice.
6. The claimant received the Notice in his inbox on May 27, 2020.
7. The claimant learned of the Notice when he checked his UI Online inbox on or after May 27, 2020.
8. At the time the claimant received the Notice, he was living in Wisconsin.
9. The claimant could not go in person to any DUA location because he was residing in Wisconsin.
10. The claimant completed and mailed the appeal request to the DUA via USPS mail within the 10-day deadline.
11. The claimant is unaware if the DUA received his appeal request by mail. The claimant did not receive further communication from the DUA regarding his appeal request.
12. The claimant attempted to contact the DUA customer service department by telephone throughout the summer of 2020 but was unable to connect to a representative.
13. The claimant filed a subsequent claim for UI benefits. Due to issues with the claim, the claimant contacted a State Representative's office for assistance. While working with the State Representative's office, the claimant discussed his 2020 UI claim from which the monetary disqualification had not been resolved.
14. On February 6, 2024, the claimant filed an appeal to the Notice with the assistance of the State Representative's office, 1,340 days past the 10-day deadline.
15. No employer threatened, intimidated, or harassed the claimant to prevent him from filing his appeal.

[Credibility Assessment:]¹

During the hearing, the claimant confirmed that his preferred method of communication is by electronic correspondence. The claimant credibly testified that he received and read the Notice and filed his appeal by mail within the 10-day deadline.

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. Upon such review, the Board adopts the review examiner's consolidated findings 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is not entitled to a hearing on merits of the May 27th Notice.

The unemployment statute sets forth a time limit for requesting a hearing on an eligibility determination issued by the DUA. 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 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. . . .

Also relevant to this case are the provisions of 430 CMR 4.13(3), which specifies that:

(3) A request for a hearing shall be deemed filed on the date it is received, if delivered in hand to a Division employee designated to receive such request, or on the date postmarked, if mailed. A request is timely if it is delivered to the Division or postmarked on or before the tenth calendar day after the date of mailing or date of delivery, in hand, of the Commissioner's determination.

When a claimant sends an appeal of a determination via U.S. Mail, the DUA will consider that appeal to have been filed on the date it was postmarked. 430 CMR 4.13(3). Although there was no envelope in this case, the review examiner expressly found that the claimant mailed his appeal within ten days of the date the May 27th Notice was issued. *See* Finding of Fact # 10. Given this finding, it is reasonable to infer that, if the U.S. Postal Service had properly affixed a postmark to the envelope containing the claimant's appeal, it would have done so within the 10-day appeal period.

¹ We have copied and pasted here the portion of the review examiner's decision which contains her credibility assessment.

Nonetheless, the review examiner denied the claimant's request for a hearing on the merits of the May 27th Notice on the grounds that the claimant had filed his appeal of the May 27th Notice more than 30 days after it was issued, and he had not shown he met the criteria for waiving the 30-day limitation on filing an appeal. *See* Finding of Fact # 14. This was in error because Finding of Fact # 10 shows that the claimant filed his appeal within the ten-day period following the issuance of the May 27th Notice.

We, therefore, conclude as a matter of law that the claimant is entitled to a hearing on the merits of the May 27th Notice, because he timely appealed that determination pursuant to the provisions of G.L. c. 151A, § 39(b) and 430 CMR 4.13(3).

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the Monetary Determination issued on May 27, 2020.

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

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