

The claimant's claim became a combined wages claim when the DUA added his base period wages from his New York employment. Because it became a combined wage claim, the DUA had the authority to withdraw the claimant's claim. Held, the claimant's claim could be withdrawn because he timely appealed the denial of his withdrawal request to the Board and did not need to make any arrangements to repay any benefits already paid to him.

**Board of Review
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Issue ID: 0082 1786 03

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's request to withdraw his unemployment claim. 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 January 14, 2024. He requested to withdraw his claim on February 12, 2024, which was denied in a determination issued on February 24, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's initial determination and denied the claimant's request to withdraw his claim in a decision rendered on April 6, 2024. We accepted the claimant's application for review.

The claimant's request to withdraw his claim was denied after the review examiner determined that the DUA had no authority to grant the claimant's request under G.L. c. 151A, §§ 23(a) and 1(c). 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 could not withdraw his claim because the DUA did not have authority to grant his withdrawal request, 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 initially attempted to file a claim for unemployment benefits in his home state of New York. The claimant was informed by the New York unemployment office that, because he had Massachusetts employment, he may be eligible for benefits in Massachusetts and recommended that he apply here first.

2. The claimant filed a claim for unemployment benefits with the Department of Unemployment Assistance (DUA) with an effective date of January 14, 2024.
3. At the time he filed his claim, the claimant was asked about workers' compensation benefits. After entering that he was receiving workers' compensation, the claimant was not allowed to enter additional employment information.
4. Despite having worked in other states, the claimant was only able to enter his Massachusetts employment at the time he filed his claim for benefits.
5. On January 19, 2024, the DUA issued the claimant a monetary determination indicating that he was monetarily eligible for unemployment benefits and that his weekly benefit rate was calculated at \$170. The monetary determination only included wages from one Massachusetts employer.
6. The claimant did not appeal the monetary determination.
7. The claimant was subsequently found to be ineligible for benefits under a capability issue.
8. Upon receiving the denial of benefits due to the capability issue, the claimant became frustrated with the Massachusetts unemployment system.
9. The claimant chose not to appeal the capability denial.
10. On February 12, 2024, the claimant contacted the DUA and requested that his unemployment benefits claim be withdrawn as he would prefer to file in New York.

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's 2024-01 claim for benefits cannot be withdrawn.

With one exception, the DUA does not have the statutory authority to grant a claimant's request to withdraw a claim properly filed pursuant to G.L. c. 151A, § 23(a). This one exception is articulated in the DUA regulation at 430 CMR 4.09(5), which provides, in relevant part, as follows:

- (5) A combined wage claimant may withdraw his/her combined wage claim within the period prescribed by M.G.L. c. 151A for filing an appeal, protest, or request for redetermination from the monetary determination of the combined wage provided:

- (a) He/she repays in full any benefits paid to him/her thereunder, or
- (b) He/she authorizes the State(s) against which he/she files a substitute claim(s) for benefits to withhold and forward to the paying State a sum sufficient to repay such benefits.

The phrase ‘combined wage claim’ refers to a claim established by “a claimant who has covered wages under the unemployment compensation law of more than one State and who has filed a claim” using all such covered wages. 430 CMR 4.09(1).

In his decision, the review examiner determined that the claimant could not withdraw his 2024-01 claim because it was not a combined wage claim. *See* Findings of Fact ## 4 and 5. However, a review of UI Online, the DUA’s online recordkeeping system, shows that the DUA issued a monetary redetermination on April 5, 2024, adding the claimant’s covered wages from his New York employment to his 2024-01 claim. As the claimant’s 2024-01 claim now utilizes his covered base period wage from both his Massachusetts and New York employment, it is a combined wage claim under G.L. c. 151A, § 26 and 430 CMR 4.09. Therefore, we conclude that the DUA had the authority to grant the claimant’s request to withdraw his 2024-01 claim for benefits as of April 5, 2024, under the exception articulated in 430 CMR 4.09(5).

In order for the DUA to exercise this authority, the claimant must show he meets the other criteria for withdrawing his claim under 430 CMR 4.09(5). A claimant seeking to withdraw his combined wage claim must do so “within the period prescribed by M.G.L. c. 151A for filing an appeal, protest, or request for redetermination from the *monetary determination of the combined wage*. . . .” 430 CMR 4.09(5) (emphasis added).

The claimant requested to withdraw his 2024-01 claim on February 12, 2024, twenty-four days after the DUA issued the initial January 14, 2024, monetary determination. Findings of Fact ## 5 and 10. In his decision, the review examiner properly noted that the claimant failed to act on the January 14th monetary determination within the ten-day period prescribed under G.L. c. 151A, § 39(b). However, the language of 430 CMR 4.09(5) specifies that the timeliness of a claimant’s withdrawal request is measured based on when the DUA issued a monetary determination or redetermination of *combined* wages. As the January 14th determination was not based on the claimant’s *combined* wages, the review examiner erred in using the issue date of that determination to assess the timeliness of the claimant’s request to withdraw his claim. *See* Finding of Fact ## 4 and 5.

The DUA did not issue a monetary determination incorporating the claimant’s combined wages until it issued the April 5, 2024, monetary redetermination. Therefore, under 430 CMR 4.09(5), we assess the timeliness of the claimant’s request to withdraw his claim based upon the issuance date of that redetermination.

Although the claimant did not file a new request to withdraw his claim, he re-stated his earlier request in his Board of Review appeal of the review examiner’s April 6, 2024, decision. He timely filed this appeal within the 30-day appeal period prescribed under G.L. c. 151A, § 40. We believe that requiring the claimant to submit another request would be unnecessarily duplicative, and we decline to penalize him for not submitting such a request. *See, generally, Haefs v. Dir. of Division*

of Employment Security, 391 Mass. 804 (1984) (because the unemployment insurance statute must be construed liberally to afford relief to workers out of work through no fault of their own, a claimant who makes good faith effort to comply with the agency's requirements will not be denied benefits). Under these circumstances, the claimant's appeal of the review examiner's decision satisfied the timeliness requirement under 430 CMR 4.09(5).

A claimant seeking to withdraw his claim must also repay in full any benefits he received from the State prior to successfully withdrawing his claim. He may either repay those benefits himself, or, if he files a claim in another State, he may authorize that State to withhold from that new claim an amount sufficient to repay any benefits he received under the now-withdrawn claim. 430 CMR 4.09(5)(a) and (b). As the claimant's UI Online profile confirms that he has not received any benefits from the Commonwealth of Massachusetts under his 2024-01 claim, no such repayment arrangement is necessary.

We, therefore, conclude as a matter of law that the claimant has met the criteria for withdrawing his combined wage claim under 430 CMR 4.09(5), and his request to withdraw his 2024-01 claim may be granted.

The review examiner's decision is reversed. The claimant's 2024-01 claim for benefits is withdrawn.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 22, 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.

LSW/rh