

**The claimant mistakenly appealed a monetary determination instead of appealing the RESEA determination he had just received. As the claimant intended to file an appeal of the RESEA determination and the mistaken appeal was filed within 10 days of the date that determination was issued, the Board deemed the appeal to have been timely filed pursuant to G.L. c. 151A § 39(b).**

**Board of Review  
100 Cambridge Street, Suite 400  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: 0083 4052 45**

### 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 a hearing on the merits of a determination, which had denied the claimant unemployment benefits beginning the week of February 25, 2024. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On June 15, 2024, the DUA issued to the claimant a Notice of Disqualification stating that he was not entitled to benefits beginning February 25, 2024, because he did not have an approved reason for failing to attend a required unemployment Reemployment and Eligibility Assessment Review meeting by the applicable deadline (RESEA determination). The claimant appealed this determination on August 12, 2024, fifty-eight days after it was issued. On September 6, 2024, the DUA issued to the claimant a Notice of Disqualification (late appeal determination), stating that he was not entitled to a hearing on the merits of the RESEA determination, because he did not have an allowable reason for submitting his appeal after the statutory deadline. 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 late appeal determination in a decision rendered on February 7, 2025. 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 under 430 CMR 4.15 to file an appeal beyond the statutory deadline. 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 was not entitled to a hearing on the merits because the agency had restored the claimant's access to his account one day after the RESEA determination was issued and a DUA representative advised him to file an appeal, 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 claim for unemployment benefits with the Department of Unemployment Assistance (DUA) effective December 3, 2023.
2. The claimant elected to receive correspondence from the DUA electronically and provided his correct email address.
3. Subsequently, the claimant's account was "hacked", and the claimant could no longer access his UI Online account.
4. On January 8, 2024, the claimant began working for a new employer.
5. On or about March 8, 2024, the claimant separated from the new employer. With a DUA agent's assistance, the claimant reopened his existing claim for unemployment benefits with an effective date of March 17, 2024.
6. Subsequently, the claimant's account was "hacked" a second time, and the claimant could no longer access his UI Online account.
7. On June 15, 2024, the DUA electronically issued the claimant a Notice of Disqualification (First Notice) in issue ID # 0082 3157 00-01. The Notice stated that the claimant was disqualified from benefits pursuant to Section 25(a) of the Law. The Notice included instructions on how to appeal the decision and the deadline for filing an appeal.
8. The claimant received the First Notice electronically the day it was issued when it was sent to his UI Online inbox.
9. No later than June 16, 2024, the claimant's account was restored, and the claimant had full access to his account.
10. On June 16, 2024, the claimant viewed his UI Online inbox.
11. On June 17, 2024, the claimant requested benefits for the week ending June 15, 2024, and his request was denied.
12. On June 17, 2024, after reading the First Notice, the claimant called the DUA. The claimant told the agent that he was exempt from the requirements that led to the disqualification. The agent advised the claimant that he needed to appeal the subject disqualification.
13. The claimant was confused by the repeated "hacks" to his account. On or about June 17, 2024, with the assistance of a different DUA agent, the claimant mistakenly appealed a different disqualification.

14. On or about August 12, 2024, the claimant contacted the DUA because he was not receiving benefits. An agent advised the claimant that he needed to appeal the subject disqualification.
15. On August 12, 2024, the 58th day after it was issued, the claimant appealed the First Notice via UI Online.
16. On September 6, 2024, the DUA electronically issued the claimant a Notice of Disqualification (Second Notice) in issue ID # 0083 4052 45-01, finding there was no justification for the claimant's untimely appeal.
17. On October 4, 2024, the claimant appealed the Second Notice via U.S. Mail.
18. The DUA or its representatives did not discourage the claimant from filing an appeal.

### 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. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portion of Finding of Fact # 13 that states that the claimant filed his appeal with the assistance of a DUA agent as inconsistent with the agency's records. In adopting the remaining findings, we deem 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 of the RESEA determination.

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 RESEA determination because he had regained access to his account the day after the determination had been issued, and, on the following day, a DUA representative had advised him to file an appeal. Findings of Fact # 7, 9, 10, 12 and 13. A review of UI Online, the DUA's electronic recordkeeping system, shows that the claimant filed an appeal on June 24, 2024, the 9<sup>th</sup> day after the RESEA determination was issued. However, he mistakenly filed an appeal of a

monetary determination. Finding of Fact # 13. There was no indication from agency records that a DUA representative assisted the claimant in filing his appeal.

In addressing similar situations, the Board has declined to penalize a claimant for inadvertently filing an appeal of an 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), *and* Board of Review Decision 0021 9945 62 (Aug. 21, 2017). In this case, the claimant learned that he appealed the incorrect determination when he spoke with a DUA representative on August 12, 2024, and filed an appeal of the RESEA determination immediately upon learning of his mistake. Findings of Fact ## 14 and 15. UI Online records also confirm that the claimant withdrew his appeal of monetary determination that same day.

Based on Findings of Fact ## 13, 14, and 15, the claimant's testimony, and his decision to withdraw his appeal of the monetary determination on the day he learned of his mistake, it is evident that the claimant was intending to timely appeal the RESEA determination when he appealed the monetary determination on June 24, 2024. Consistent with Board precedent, we decline to penalize him for formally appealing the wrong issue. Further, as the claimant filed his appeal within the 10-day appeal window, we deem the claimant's appeal of the present issue to have been timely filed.

We, therefore, conclude as a matter of law that the claimant is deemed to have timely filed his 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 disqualifying determination, dated June 15, 2024, in Issue ID # 0082 3157 00.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 25, 2025**



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.

LSW/rh