

Upon being terminated from her job, her employer’s written notice merely informed her of her right to seek unemployment insurance benefits. Because it did not provide the detailed instructions about how to file, she is automatically entitled to have her claim pre-dated pursuant to G.L. c. 151A, § 62A(g).

**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 9678 79

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 an earlier effective date for a claim for unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her position with the employer on August 9, 2024. She filed a claim for unemployment benefits with the DUA on September 25, 2024, and subsequently requested to have her claim pre-dated to August 11, 2024. Her request to pre-date the claim was denied in a determination issued on October 16, 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 request to pre-date the claim in a decision rendered on November 14, 2024. We accepted the claimant’s application for review.

An earlier effective date was denied after the review examiner determined that the claimant did not have good cause for failing to file a timely claim for benefits, and, thus, she was not entitled to have her claim pre-dated to August 11, 2024, under G.L. c. 151A, §§ 23(b) and 24(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 is not entitled to a pre-date because she and her attorney made the decision to delay filing her claim for benefits, 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 separated from her employer on August 9, 2024.
2. The employer provided the claimant with a written letter including her rights to file for unemployment upon notification of her lay-off. The employer also

- provided the claimant with a separation agreement. The agreement had a forty-five (45) day review date.
3. The claimant and her attorney reviewed the separation agreement and made revision requests of the employer for additional severance, COBRA coverage, and other changes to the agreement.
 4. The claimant's attorney advised the claimant to not file for unemployment benefits until the negotiations regarding the severance agreement were done.
 5. By mid-September, the claimant needed a source of income.
 6. On September 25, 2024, the claimant filed for unemployment with an effective date of September 22, 2024.
 7. The claimant is requesting a predate of her claim to the week beginning August 11, 2024.
 8. The claimant has filed for unemployment previously in 2022.

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 was not entitled to have her claim pre-dated.

The legislature enacted G.L. c. 151A, § 62A(g), in order to ensure that workers are informed of the process for seeking unemployment benefits. It provides, in pertinent part, as follows:

Each employer shall issue to every separated employee, as soon as practicable, but not to exceed 30 days from the last day said employee performed compensable work, *written information furnished or approved by said division* which shall contain the name and mailing address of the employer, the identification number assigned to the employer by said division, *instructions on how to file a claim for unemployment compensation*, the address and telephone number of the regional office which serves the recipient, and the telephone number of the teleclaim information line. Delivery is made when an employer provides such information to an employee in person or by mail to the employee's last known address. *The waiting period under section 23 for an employee who did not receive the information required by this paragraph and who failed to file timely for benefits, shall be the Sunday of the initial week such employee would have been eligible to receive unemployment compensation.* Each employer shall have the burden of demonstrating compliance with the provisions required herein. (Emphasis added.)

The review examiner concluded that the claimant had not shown good cause for failing to file her claim for unemployment benefits because the claimant and her attorney decided to delay filing a claim until they had completed negotiations over the claimant's severance agreement. Finding of Fact # 4. We disagree with the review examiner's conclusion, as the claimant's decision to delay filing her claim is immaterial in this case.

Pursuant to G.L. c. 151A, § 23(b), 24(c), and 430 CMR 4.01(3) and 4.01(4), a claim effective date may be pre-dated under certain circumstances, if good cause for the delay in filing is established. The review examiner in this case decided that the claimant did not provide good cause. However, G.L. c. 151A, § 62A(g), mandates granting a pre-date if the claimant's former employer does not provide her with written information that has either been furnished or approved by the DUA, and which provides detailed instructions on how to file an unemployment claim. The Legislature placed the burden upon the employer to prove that it provided the required written notice under G.L. c. 151A, § 62A(g).

The claimant's former employer provided her with a written termination letter including reference to her right to file a claim for unemployment insurance benefits. Finding of Fact # 2. While this letter informed the claimant of her right to file, her uncontested testimony was that her former employer did not provide her with any further documentation containing instructions on how to file such a claim.¹ Pursuant to G.L. c. 151A, § 62A(g), employers are required to provide and instructions on how to file a claim for unemployment insurance benefits in the appropriate jurisdiction. Language that merely informs a claimant of their right to seek unemployment insurance benefits is not, by itself, sufficient to satisfy the requirements of G.L. c. 151A, § 62A(g).

Absent evidence the employer provided written information with the detailed instructions set forth under this statutory provision about how to file a claim, the claimant is automatically entitled to have the effective date of her claim made retroactive to the Sunday of the initial week that she would have been eligible for unemployment compensation after she separated from the employer. Since the claimant separated from her previous employer on Friday, August 9, 2024, the Sunday of the initial week she would have been eligible after separating is August 11, 2024.

We, therefore, conclude as a matter of law that, pursuant to the requirements of G.L. c. 151A, § 62A(g), the claimant is automatically entitled to have her claim pre-dated.

The review examiner's decision is reversed. The claimant is entitled to have the effective date on her claim pre-dated to August 11, 2024.

¹ The claimant's testimony in this regard, while not explicitly incorporated into the review examiner's findings of fact, is part of the unchallenged evidence introduced at the hearing and placed into 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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 30, 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

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