

Having elected to receive DUA communications electronically, the claimant was responsible for checking her personal email inbox as well as her spam folder for email communications from DUA to look for important notices pertaining to her claim. Failure to check the latter does not show that she did not receive the email notice about a disqualifying determination. As such, the claimant did not meet the criteria under G.L. c. 151A, § 39(b), or 430 CMR 4.15 to file an appeal beyond the statutory appeal deadline.

**Board of Review
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Issue ID: 0084 0395 87

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 affirm.

On June 29, 2024, the DUA issued a Notice of Disqualification to the claimant, denying benefits pursuant to G.L. c. 151A, § 24(b), as of March 24, 2024, due to not establishing that she was authorized to work in the United States (authorized to work determination). The claimant appealed this authorized to work determination to the DUA hearings department on October 21, 2024, 115 days after the determination was issued. On December 12, 2024, the DUA issued a determination denying a hearing on the merits of the authorized to work determination, stating that the claimant did not have justification for submitting her appeal after the statutory deadline (late appeal determination). The claimant timely filed an appeal of 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 January 29, 2025. We accepted the claimant's application for review.

A hearing on the merits of the authorized to work 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 received notice of the authorized to work 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 the claimant failed to establish that she did not get the DUA's email communication to look for the authorized to work determination at the time it was issued, 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 an unemployment claim with the Department of Unemployment Assistance (DUA) on March 24, 2024, which was determined to be effective March 24, 2024, with a weekly benefit amount of \$1,033.00.
2. The claimant elected to receive electronic correspondence from the DUA.
3. On April 25, 2024, the claimant returned to the workforce.
4. In April and May 2024, the claimant called the DUA for assistance regarding her unemployment claim, but did not speak to a customer service representative.
5. On June 29, 2024, the DUA issued the claimant a Massachusetts General Laws Chapter 151A, Section 24(b) Notice of Disqualification by placing the letter in the claimant's DUA inbox that read, in part, "You have not established that you are legally permitted to work in the United States. Therefore, you do not meet the requirements pursuant to the Law." The Notice also read, in relevant part, "This determination will become final unless: (1) You request a hearing within ten calendar days after the date of the mailing; or (2) You request a hearing within eleven to thirty calendar days after the date of mailing and it is established that such delay was for good cause. In limited circumstances, you may request a hearing after thirty calendar days".
6. On approximately June 29, 2024, the DUA sent the claimant an email to her personal email account informing her that new correspondence from the DUA requiring her attention had been placed in her DUA inbox.
7. The claimant was monitoring her personal email, but not her personal spam/junk folders for DUA correspondence at the time the June 29, 2024, Section 24(b) Notice of Disqualification was issued.
8. The claimant was not monitoring her DUA account/inbox at the time the June 29, 2024, Section 24(b) Notice of Disqualification was issued.
9. Between June 29, 2024, and October 17, 2024, the claimant did not access her DUA inbox.
10. On October 18, 2024, the claimant accessed her DUA inbox and read the June 29, 2024, Section 24(b) Notice of Disqualification.
11. On October 20, 2024, the claimant filed for unemployment benefits for the week ending October 19, 2024, as she separated from her employment.

12. Between June 29, 2024, and October 21, 2024, the claimant did not contact the DUA for assistance regarding her unemployment claim.
13. The claimant did not file an appeal pertaining to the June 29, 2024, Section 24(b) Notice of Disqualification within the applicable timeframe because she mistakenly thought her unemployment claim was approved, did not understand that her original claim applied for a full year, and subsequently, did not read the June 29, 2024, Section 24(b) Notice of Disqualification upon it being issued.
14. On October 21, 2024, 115 calendar days after the June 29, 2024, Section 24(b) Notice of Disqualification was issued, the claimant filed an appeal.
15. Following October 21, 2024, the claimant contacted the DUA for clarification on her unemployment claim.
16. On December 12, 2024, the DUA issued the claimant a Section 39 Notice of Disqualification denying the claimant's request for a hearing regarding her appeal pertaining to the June 29, 2024, Section 24(b) Notice of Disqualification.
17. The claimant filed an appeal pertaining to the December 12, 2024, Section 39 Notice of Disqualification on December 16, 2024.

Credibility Assessment:

During the original hearing, the claimant asserted that she did not think she received the June 29, 2024, Section 24(b) Notice of Disqualification, but candidly admitted that she was not monitoring her DUA inbox or her personal email spam/junk folders for DUA correspondence. As such, the claimant's testimony regarding not receiving the June 29, 2024, Section 24(b) Notice of Disqualification is deemed not credible as the claimant candidly admitted she was not checking her DUA inbox or personal email spam/junk folders for DUA correspondence.

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 of fact 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. As discussed more fully below, we also agree with the review examiner's legal conclusion that the claimant is not entitled to a hearing on the merits of the authorized to work 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. . . .

However, the DUA allows parties to file a late appeal under certain limited circumstances. Specifically, if an appeal is filed beyond 30 days, 430 CMR 4.15, provides:

The 30 day limitation on filing a request for a hearing shall not apply where the party establishes that:

- (1) A Division employee directly discouraged the party from timely requesting a hearing and such discouragement results in the party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing;
- (2) The Commissioner's determination is received by the party beyond the 30 day extended filing period and the party promptly files a request for hearing;
- (3) The Commissioner's determination is not received and the party promptly files a request for a hearing after he or she knows that a determination was issued.
- (4) An employer threatened, intimidated or harassed the party or a witness for the party, which resulted in the party's failure to file for a timely hearing.

In this case, the claimant filed her appeal on October 21, 2024, 115 days after the determination date. Consolidated Finding # 14. She has asserted that she never received a DUA email notification to look for the notice in her inbox, effectively arguing that she is allowed to file the late appeal pursuant to 430 CMR 4.15(3), because she did not know about the determination. However, in light of the fact that the claimant admitted that she was not monitoring her personal email spam folder at the time, the review examiner rejected this assertion as not supported by substantial and credible evidence. *See Consolidated Finding # 7.*

While it is understandable that the claimant may not have thought it necessary to log into her DUA UI Online account to monitor her inbox after returning to work, the fact remains that she had recently filed a claimant for benefits and had elected to receive all DUA correspondence electronically. *See Consolidated Finding # 2.* Accordingly, DUA notices were sent electronically, both by transmitting notices to her UI Online account inbox and by notifying the claimant via her provided email address to look in the UI Online inbox. Having selected electronic correspondence, the onus was on the claimant to monitor her personal email account for DUA communications, including any emails sent to her spam folder. Her failure to check her spam folder does not mean that the email notification had not been transmitted or received.¹

¹ We note that UI Online records shows that the June 29, 2024, authorization to work determination was emailed on June 28, 2024, at 1:15 p.m.

We, therefore, conclude as a matter of law that the claimant failed to meet the criteria under 430 CMR 4.15, for filing an appeal beyond the statutory appeal period as required by G.L. c. 151A, § 39(b).

The review examiner's decision is affirmed. The claimant is not entitled to a hearing on the merits of her authorization to work determination in Issue ID # 0082 4604 66.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 25, 2025



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

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