

The claimant is automatically entitled to have his claim pre-dated pursuant to G.L. c. 151A, § 62A(g), because the employer did not provide him with the required written notice about how to file for unemployment benefits. While the claimant was entitled to a pre-date of this claim, he had exhausted all of the benefits to which he was entitled as of the date of this decision. In effect, he does not receive any additional benefits on his claim.

**Board of Review
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Issue ID: 0084 3245 70

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

The claimant separated from his position with the employer on or about November 5, 2024. He filed a claim for unemployment benefits with the DUA on November 18, 2024, and subsequently requested to have his claim pre-dated. His request to pre-date the claim was denied in a determination issued on November 27, 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 December 28, 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, he was not entitled to have his claim pre-dated to November 10, 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 he was aware that he could file his claim online but failed to do so on November 10, 2024, 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 (UI) on November 18, 2024, with an effective date of November 17, 2024.
2. The claimant had never filed a claim for UI prior to November 18, 2024.

3. The claimant was employed by a paving company beginning in May 2024.
4. The claimant anticipated being laid off with the other employees at some point in mid-November 2024.
5. On November 5, 2024, the claimant's work truck broke down.
6. The employer decided to lay the claimant off early rather than fix the truck with only a few weeks left in the season.
7. The employer did not provide the claimant with information on how to apply for UI. The employer told the claimant to ask his co-workers because they were familiar with the process because they collected UI every year when they were laid off.
8. The claimant's co-workers told the claimant that he would not be paid for the first few weeks but to call the Department of Unemployment Assistance (DUA) to apply for UI, or he could complete the online application. The co-workers told the claimant to call right away since the employer told him to go on unemployment.
9. On November 6th or November 7, 2024, the claimant called the DUA customer service line and was told to wait until Sunday to open his claim.
10. The claimant did not open his claim on Sunday, November 10, 2024.
11. The claimant could not get through to DUA customer service.
12. On Monday, November 18, 2024, the claimant spoke to a DUA customer service representative and opened his initial UI claim the same day.
13. On Sunday, November 24, 2024, the claimant certified for benefits for the week ending November 23, 2024.
14. On November 27, 2024, the DUA sent the claimant a notice stating he was not entitled to a predate of his claim under M.G.L. c. 151A, § 24(c).
15. The claimant seeks to predate his claim to November 10, 2024.

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 his 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 his claim for unemployment benefits because the claimant was aware that he could file his claim online yet failed to do so on November 10, 2024, or during the week thereafter. *See Findings of Fact ## 9–10.* We disagree with the review examiner's conclusion, as the claimant's alleged awareness of how he could file his 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 him 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 review examiner found that the claimant's former employer failed to provide him with written information regarding his right to file a claim for unemployment insurance benefits. Instead, the employer directed the claimant to consult with his co-workers about how to request benefits, because they filed claims every year after being laid off from their seasonal work. *See Finding of Fact # 7.* Pursuant to G.L. c. 151A, § 62A(g), employers are required to provide written instructions on how to file a claim for unemployment insurance benefits in the appropriate jurisdiction. Instructing a claimant to ask co-workers to explain how to pursue their right to seek unemployment insurance benefits is wholly insufficient 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 his claim made retroactive to the Sunday of the initial week that he would have been eligible for unemployment compensation after he separated from the employer. Since the claimant separated from his previous employer on or about Tuesday, November 5, 2024, the Sunday of the initial week he would have been eligible after separating is November 3, 2024 (not November 10, 2024, as referenced in the review examiner's findings and conclusion).

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 his claim pre-dated.

The review examiner's decision is reversed. The claimant is entitled to have the effective date on his claim pre-dated to November 3, 2024.

However, from review of the DUA's UI Online computer database, we note that the claimant exhausted his claim for benefits as of the week ending February 22, 2025. Although the claimant is entitled to a pre-date on this claim, he is not entitled to certify for any additional weeks on the claim.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 28, 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.