

The review examiner reasonably rejected as not credible the claimant's assertion that he never received a DUA email communication to look in his UI Online account for an important message about his claim. Held he did not meet the criteria to allow an appeal filed more than 30 days after the disqualifying determination was issued. Pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.15, he is not entitled to a hearing on the merits of that disqualification.

**Board of Review
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Issue ID: 0084 3655 59

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

On July 22, 2024, the DUA issued a Notice of Disqualification to the claimant, denying benefits pursuant to G.L. c. 151A, § 25(a), as of July 14, 2024, due to his failure to complete a Reemployment Services Eligibility Assessment (RESEA) review (RESEA determination). The claimant appealed this RESEA determination to the DUA hearings department on November 22, 2024, 123 days after the determination was issued. On January 24, 2025, the DUA issued a determination denying a hearing on the merits of the RESEA determination, stating that the claimant did not have justification for submitting his appeal after the statutory deadline (late appeal determination). The claimant appealed 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 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 to file an appeal beyond the statutory deadline as allowed under 430 CMR 4.15. 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 address further questions about whether the claimant received a DUA email notice to check for the RESEA determination. Following the remand hearing, the review examiner issued her consolidated findings of fact. 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's failure to attend to important messages from DUA after he returned to work did not constitute good cause to file his appeal beyond the statutory deadline, 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 a claim for unemployment insurance (UI) benefits, effective May 19, 2024.
2. The claimant elected to receive correspondence electronically and provided the DUA with his correct email address.
3. The claimant began working sometime in July 2024.
4. After returning to work, the claimant chose to stop checking his UI online account.
5. The claimant was not regularly monitoring his personal email account for correspondence from the DUA in July 2024.
6. On July 22, 2024, the DUA issued the claimant a Notice of Disqualification (the Notice), informing the claimant that he was not eligible for benefits pursuant to Section 25(a) of the Law.
7. On July 22, 2024, the claimant received the Notice when it was properly delivered to his UI Online inbox.
8. On July 22, 2024, the DUA sent the claimant an email informing him that he had correspondence in his UI Online inbox.
9. In July 2024, the claimant was not experiencing any problems with his emails, nor did he ever experience any issues with receiving correspondence from the DUA before.
10. The claimant was not monitoring his spam folder for correspondence from the DUA because he had previously received correspondence from the DUA in his regular inbox.
11. Nothing changed with the claimant's email or email setting between July 8, 2024, and July 22, 2024.
12. The claimant was laid off from his employment in November 2024.
13. The claimant reopened his claim for unemployment benefits in November 2024.
14. After reopening his claim, the claimant noticed that he was denied benefits.

15. In November 2024, the claimant contacted the DUA regarding his claim, and an agent told him that he had to appeal the Notice.

16. On November 22, 2024, 123 days after its initial determination, the claimant filed his appeal of the Notice with the DUA.

Credibility Assessment:

During the remand hearing, the claimant asserted that he did not receive any email notification regarding the Notice dated July 22, 2024, and only became aware of the Notice in November 2024, after he was laid off. He asserted that the last correspondence he received from the DUA was on July 8, 2024. He also asserted that he was monitoring his personal email account for correspondence from the DUA in July 2024.

It is concluded that the claimant is not credible with regard to whether he was receiving e-mail notifications from the DUA. This is so, particularly in light of his testimony that he did not have any problems with his email or his UI Online account, and that nothing changed with his UI inbox or email settings between July 8, 2024 and July 22, 2024. It is determined that the claimant received the email notification regarding this determination on or about July 22, 2024. However, because the claimant had returned to work sometime in July 2024 and was no longer filing for benefits, he was not paying attention to correspondence from the department. Although the claimant chose not to check his inbox or read the Notice until November 2024, he was notified about the correspondence, and the claimant received the Notice when it was properly delivered to his inbox on July 22, 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 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. Given the consolidated findings and credibility assessment, we agree with the review examiner's legal conclusion that the claimant has not met the criteria for filing his appeal beyond the statutory deadline.

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 his appeal on November 22, 2024, 123 days after the RESEA determination date. Consolidated Finding # 16. He has asserted that he never received a DUA email notification to look for the notice in his inbox, effectively arguing that he is allowed to file the late appeal pursuant to 430 CMR 4.15(3), because he did not know about the determination. However, as explained in her credibility assessment, the review examiner rejected this assertion as not credible, finding that he received the email notification on July 22, 2024.

Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). "The test is whether the finding is supported by 'substantial evidence.'" *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted). Based upon the record before us, her conclusion that the claimant did receive the DUA's July 22, 2024, email is reasonable.

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).

However, we note that the Department of Career Services' Massachusetts One Stop Employment System (MOSES) confirms that the claimant attained his RESEA review on February 19, 2025, and the DUA has placed an end date of the week ending February 15, 2025, on the disqualification.

The review examiner's decision is affirmed. The claimant is not entitled to a hearing on the merits of his RESEA determination in Issue ID # 0083 2443 02.

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

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