

The claimant did not appeal a determination disqualifying him for one week due to failure to meet the initial RESEA meeting deadline until 135 days later. The review examiner rejected his assertion that he never received a DUA email alert at the time of the determination, instead reasonably concluding that the claimant received it, but ignored it because he was about to start a new job. Held this was not a basis to allow a late appeal beyond the statutory appeal deadline pursuant to G.L. c. 151A, § 39(b) or 430 CMR 4.15.

**Board of Review
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Issue ID: 0084 9315 03

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 unemployment benefits during the week ending August 24, 2024. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On August 26, 2024, the DUA issued a Notice of Disqualification to the claimant, denying benefits pursuant to G.L. c. 151A, § 25(a), due to his failure to complete an initial Reemployment Services Eligibility Assessment (RESEA) (RESEA determination). The claimant appealed this RESEA determination to the DUA hearings department on January 8, 2025, 135 days after the determination was issued. On January 23, 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 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 February 21, 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 obtain further evidence pertaining to whether the claimant received notice of the RESEA determination. The claimant attended the remand hearing, and the review examiner subsequently issued her 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 returning to work was not a basis to fail to check for DUA communications and that a DUA agent's incorrect instructions were immaterial because the appeal was already well beyond the statutory appeal period, 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 benefits with the Department of Unemployment Assistance (DUA) with an effective date of 6/9/24.
2. At the time of filing, the claimant chose electronic as his preferred correspondence.
3. The email address on the claimant [sic] is a correct email address for the claimant.
4. The claimant has never reported any issues receiving correspondence to the DUA.
5. On 8/25/24 at 2:12:45 a.m., an email was sent to the claimant informing him he had important correspondence in his UI Online account.
6. On 8/26/24, DUA issued a Notice of Disqualification (the Notice) to the claimant in Issue ID: 0083 5212 56-01, which stated the claimant was disqualified based on his failure to report for/attain the UI Career Center Seminar/Initial RESEA as required.
7. The Notice was generated on 8/25/24 but contains the date of 8/26/24 as the UI Online system puts the date of the following business day on correspondence after the system "batches" overnight.
8. The Notice also stated that the determination would become "final" unless the claimant requested a hearing within 10 days from the date of the determination, or within 11-30 days if he could establish good cause. The Notice also indicated that a hearing could be requested after 30 days in "limited circumstances".
9. The claimant was not checking his UI Online Inbox at the time the Notice was sent because he was about to start a new job.
10. The claimant did not, and does not, monitor his personal email for DUA correspondence.
11. The claimant did not, and does not, monitor his spam/junk folder in his personal email for DUA correspondence.
12. The claimant subsequently lost his job and reopened his claim on 12/15/24.
13. The claimant was told by DUA staff that he needed to complete the RESEA program before appealing the Notice.

14. The claimant completed the RESEA program and filed his appeal on 1/[8]/25. The appeal was late.

Credibility Assessment:

The claimant attended the remand hearing which was held via telephone on 3/24/25. The claimant testified that he was not checking his UI Online Inbox at the time the Notice was issued because he was starting a new job. The claimant's testimony is credible on this point and is corroborated by the claimant's activity in UI Online. He further testified that he was not monitoring his email or spam/junk filters for DUA correspondence. There is no reason to doubt the claimant's credibility on this point. However, the claimant also testified that he had not received the email alerting him to correspondence in his Inbox, and that he never receives the alert email. This testimony is not credible. As an initial matter, the claimant has never complained about issues receiving correspondence, which would be expected of someone having issues. Additionally, DUA records show that the relevant email was sent to him successfully on 8/26/24. Finally, the claimant was also denied benefits for the week of 8/24/25, which would also have alerted him to an issue. It is more likely that the claimant received the email and ignored it since he was starting a new job.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except to note as follows. We interpret Consolidated Finding # 3 to refer to the email address in the DUA's records.¹ In adopting the remaining findings, we deem 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 agree with 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

¹ See Exhibits 4 and 6, screen shots from DUA's electronic record-keeping system, UI Online, which show the claimant's reported email address. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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).

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 January 8, 2025, 135 days after the determination date. *See Consolidated Findings ## 6 and 14.* 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, the review examiner rejected this assertion as not credible, concluding instead that the claimant received the email notice but ignored it because he was about to start a new job.

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). Her credibility assessment is reasonable in light of the fact that DUA records confirm that it notified him to check his UI online account when it sent him an email on August 25, 2025. Consolidated Finding # 5. Further, at that time, he had chosen to stop checking his UI Online inbox and did not monitor his personal email inbox or his spam folder for DUA correspondence. *See Consolidated Findings ## 9–11.*

The claimant's reason for not doing so was that he was returning to work. *See Consolidated Finding # 9.* While this is understandable, it does not fall under one of the four bases in 430 CMR 4.15 for allowing an appeal more than 30 days after the determination date.

We also consider that, when the claimant re-opened his claim on December 15, 2024, a DUA agent discouraged him from promptly filing his appeal until he satisfied his RESEA obligations. *See*

Consolidated Finding # 13. This was improper. However, the agent did not discourage him until after December 15, 2024. *See Consolidated Findings ## 13 and 14.* Even if, pursuant to 430 CMR 4.15(1), we decline to penalize the claimant for delaying his appeal for another three weeks, the period between December 15, 2024, and January 8, 2025, it has no effect. As of December 15, 2024, he was well beyond 30 days from the RESEA determination date without grounds for allowing a late appeal.

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 his RESEA determination in Issue ID # 0083 5212 56.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 29, 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