

The claimant filed an appeal within 10 days of a disqualifying availability determination but errantly submitted the appeal under a different determination. Where the appeal contained the correct Issue ID for the availability determination, the Board deemed the hearing request to have been timely filed pursuant to G.L. c. 151A, § 39(b).

**Board of Review
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Issue ID: 334-FHJN-8VKD

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) concluding that the claimant lacked justification for filing a late request for a hearing. We review pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On October 23, 2024, the DUA issued a Notice of Determination to the claimant denying benefits pursuant to G.L. c. 151A, § 24(b) (availability determination). The claimant appealed the availability determination on January 9, 2025, 78 days after it was issued. On February 22, 2025, the DUA issued a Notice of Determination to the claimant denying a hearing on the merits of the availability determination, stating that the claimant did not have an allowable reason 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 April 4, 2025. We accepted the claimant's application for review.

A hearing on the merits of the availability 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. 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's mistake in appealing the wrong determination was not a basis to allow a late appeal, 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's primary language is Spanish. The claimant's partner's primary language is English.

2. With the claimant's permission, the claimant's partner (the Agent), filed a claim for unemployment benefits with the Department of Unemployment Assistance (DUA) effective January 7, 2024.
3. The Agent elected to receive electronic correspondence from the DUA and provided her correct email address. The Agent selected "English" as the preferred correspondence language. The claimant relied on the Agent to read and respond to DUA correspondence.
4. On October 23, 2024, the DUA electronically issued the claimant a Notice of Disqualification (the First Notice) in issue ID # 0083 9439 93-01.
5. The Agent received and read the First Notice on UI Online.
6. On October 30, 2024, via UI Online, the Agent mistakenly appealed a different disqualification. The Agent did not appeal the First Notice.
7. Subsequently, the claimant and the Agent, after speaking with an attorney, learned the Agent had mistakenly appealed the wrong disqualification.
8. On January 9, 2025, the 78th day after the First Notice issued, the Agent appealed the First Notice via UI Online. Issue ID: [0083 9439 93]
9. On February 22, 2025, the DUA issued the claimant a Notice of Disqualification (the Second Notice) indicating that the reasons for his late appeal of the First Notice did not constitute good cause.
10. The claimant's Agent received and read the Second Notice on UI Online.
11. On February 27, 2025, the Agent appealed the Second Notice via UI Online.
12. A DUA representative never discouraged the claimant from filing an appeal.
13. As of March 24, 2025, the claimant's UI Online account language preference is English.

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 is not entitled to a hearing on the merits of the availability 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.

DUA issued the availability determination on October 23, 2024. *See* Finding of Fact # 4. Seven days later, on October 30, 2024, the claimant's partner filed an appeal but uploaded that appeal to a different determination. *See* Findings of Fact ## 2 and 6. Specifically, the partner used the hearing request form with DUA's Issue ID # 0083 9439 93 assigned to the availability determination, but she uploaded it onto a determination assigned DUA Issue ID # 0083 6760 98. Agency records confirm this. *See* Exhibit 8.¹ Given the timing of this appeal, it is evident that the claimant's partner intended to file an appeal of the availability issue on October 30, 2024.

The claimant only became aware of this mistake after he consulted with an attorney, who discovered the error. *See* Finding of Fact # 7. He then filed an appeal of the availability determination under the proper issue ID number. *See* Finding of Fact # 8.

Where the claimant used the October 30, 2024, hearing request form, and it was filed within the 10-day appeal deadline, we decline to penalize him for formally appealing it under the wrong DUA issue ID number. We deem his appeal for the availability determination to have been timely filed. *See* Board of Review Decision 0021 9945 62 (Aug. 21, 2017).

We, therefore, conclude as a matter of law that the claimant timely filed his request for a hearing pursuant to G.L.c.151A, § 39(b).

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the availability determination, dated October 23, 2024.²

¹ Exhibit 8 is a screen shot of the event log of the claimant's unemployment claim from the DUA's electronic record-keeping system, UI Online. While not explicitly incorporated into the review examiner's findings, this exhibit is part of the unchallenged evidence introduced at the hearing and placed in 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).

² Issue ID # 0083 9439 93 was assigned to the availability determination in UI Online. This same availability issue is now assigned Issue ID # 334-FHJN-8VL9 in the DUA's new electronic database.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 30, 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.

PGS/rh