

The claimant is entitled to a hearing on the merits of her separation disqualification pursuant to 430 CMR 4.15(3), where a confluence of factors, including, *inter alia*, a language barrier and struggling to separate from an abusive ex-partner prevented her from timely receiving and appealing the original notice of disqualification.

**Board of Review
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Issue ID: 334-FHM4-KL8K

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 a determination issued on May 29, 2024, which disqualified her from receiving benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with the DUA, effective April 28, 2024, which was initially approved. On May 29, 2024, the DUA denied benefits pursuant to G.L. c. 151A, § 25(e), based upon the circumstances of her separation from her prior employer (separation determination). The claimant appealed the separation determination on November 21, 2024, 176 days after it was issued. On November 25, 2024, the DUA issued a separate determination pursuant to G.L. c. 151A, § 39(b), denying her request for a hearing on the separation determination on the grounds that she did not have good cause for filing a late appeal (late appeal determination). The claimant appealed the late appeal determination. Following a hearing on the late appeal determination, the review examiner affirmed the agency's denial of a hearing on the separation determination in a decision rendered on January 11, 2025. We accepted the claimant's application for review.

The review examiner concluded that the claimant did not have good cause for failing to timely file an appeal of the separation determination pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.15. Thus, she was not entitled to a hearing on the merits. 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 consider further evidence pertaining to issues with the claimant's notice about the separation determination. Following a remand hearing, where the claimant had representation and a Spanish interpreter, 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 failed to meet any basis under 430 CMR 4.15 to allow her to file her appeal more than 30 days after DUA issued its determination, is supported by substantial and credible evidence and is free from error of law in light of the undisputed evidence of the claimant's struggles with the English language, using the computer, and dealing with domestic abuse.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. The claimant ended her relationship with her former partner (former partner) of fifteen (15) years in 2022. The claimant had a restraining order against her former partner in 2022 for ten (10) days, but did not renew the restraining order after ten (10) days.
2. The claimant filed a new claim for unemployment benefits with the Department of Unemployment Assistance (DUA), with an effective date of April 28, 2024 (2024-01 claim).
3. The claimant did not call the DUA for help with filing the 2024-01 claim.
4. The claimant called her former partner to help her file the 2024-01 claim.
5. The claimant gave her partner permission to file the 2024-01 claim, including her personal information to do so.
6. The 2024-01 claim application contained the claimant's correct email address.
7. Upon filing the 2024-01 claim, the claimant elected to receive her correspondence electronically.
8. The claimant is not computer savvy and did not understand how electronic correspondence worked.
9. On May 29, 2024, the DUA sent the claimant a Notice of Disqualification (Notice) to her UI Online Inbox.
10. The Notice notified the claimant that she had been disqualified from receiving benefits for the week beginning April 28, 2024, and thereafter.
11. Written instructions printed on the Notice notified the claimant of the means by which she could request a hearing on the matter and the time parameter which such an appeal had to be filed to be considered timely.
12. The claimant received the Notice on May 29, 2024, when it was issued to her in her UI Online Inbox.
13. The claimant received an email on May 29, 2024, informing the claimant to check her UI Online Inbox.
14. The claimant does not regularly check her personal email account.

15. At the end of May 2024, the claimant was not regularly checking her personal email account for DUA correspondence because the claimant does not use email regularly and the claimant did not understand how electronic correspondence works.
16. The claimant is not aware of any issues she was having receiving emails from the DUA.
17. The claimant checked her UI Online Inbox on September 13, 2024, September 16, 2024, September 17, 2024, October 1, 2024, October 3, 2024, October 14, 2024, November 19, 2024, and November 21, 2024.
18. The claimant did not appeal the Notice at the time it was received because the claimant was not checking her UI Online Inbox, the claimant did not understand how electronic correspondence worked, and the claimant's own general confusion about the unemployment benefits process.
19. The claimant did not call the DUA about the Notice, her account, or how the unemployment benefits process worked.
20. On November 21, 2024, the claimant filed her appeal related to the Notice, after speaking to a DUA representative on the phone.
21. November 21, 2024, is the 176th calendar day following May 29, 2024.
22. The claimant did not speak to her employer about the Notice.
23. The claimant was not discouraged from filing an appeal by anyone at the DUA.
24. The claimant was not harassed or threatened related to filing an appeal of the Notice.
25. The claimant was not discouraged from filing an appeal by her employer.
26. On December 6, 2024, the claimant changed her correspondence preference to U.S. Mail.

Credibility Assessment:

As a preliminary matter, the claimant's testimony as a whole is not accepted as credible due to the claimant providing inconsistent, vague, and illogical testimony. Although the claimant argued there was a period of time when she was not in control of her email account or her UI Online account, this testimony was not credible, therefore no findings of fact were made. The claimant could not provide dates for when anything occurred, including supposedly losing control of her e-mail, regaining control of her email, where she was living, and being in control of her UI Online account. The claimant was inconsistent regarding the role that

purported domestic violence issues played in her having issues with filing an appeal. At the initial hearing date, the claimant stated her domestic violence issues did not play a role in her filing her appeal late. At the remand hearing date, the claimant alleged that her domestic violence issues did play a role in her appealing late. Additionally, the claimant stated that prior to filing her appeal, she both did and did not reach out to the DUA with questions regarding her DUA account. Regarding her illogical testimony, the claimant was unable to provide a logical and consistent timeline of events as to what happened and when regarding her housing, domestic violence issues, and issues with her email. As such, the claimant's testimony as a whole is not accepted as credible.

The claimant admitted at the hearing that she had not checked her email for evidence of whether the DUA issued her an email in May 2024, but that she did receive emails from the DUA at times. As such, given that the claimant's testimony is not accepted as credible and that the claimant admitted to receiving emails from the DUA at times, it is concluded that the claimant did receive an email alert on May 29, 2024, telling her to check her UI Online Inbox.

Given that the claimant's testimony is not accepted as credible, it cannot be concluded that the claimant's domestic violence issues played a role in the claimant appealing late. The claimant first testified that her domestic violence issues did not play a role in her appealing late. Only after the claimant's determination was affirmed did she testify at the remand hearing that her domestic violence issues played a role in her appealing late. Additionally, the claimant was unable to provide a logical timeline for how and when she supposedly lost control of her email account. As such, it cannot be concluded that these are credible reasons for why the claimant appealed late.

Lastly, the claimant had no explanation for why she was checking her UI Online Inbox in September and October 2024 and failed to file an appeal at that point. As such, it is concluded that the claimant was aware of the Notice as of September 1, 2024, and she failed to request an appeal at that time due to unknown reasons. The claimant failed to reach out to the DUA to ask questions, inquire about her benefits, and learn more information about her benefits and the unemployment process.

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 as follows. Consolidated Finding # 15 fails to capture all of the reasons which caused the claimant not to check her personal email for DUA correspondence at the end of May, 2024. Similarly, Consolidated Finding # 18 fails to include all of the reasons for the claimant's failure to appeal the separation determination at the time it was issued. In adopting the remaining findings, we deem 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 her separation 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 a 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. . . .

There is no question that a hearing request filed 176 days after the determination date is well beyond the statutory 10-day filing period under G.L. c. 151A, § 39(b). *See* Consolidated Finding # 21. However, the DUA has promulgated regulations which allow for filing an appeal more than 30 days after the determination is issued. Specifically, 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.

On appeal and during the hearings, the claimant has asserted that various factors contributed both to her not receiving and not timely appealing the separation determination, effectively arguing that she is allowed to file her late appeal pursuant to 430 CMR 4.15(3). Given the record before us, we agree.

Foremost, we consider that, in both the original and remand hearings, the claimant testified that, during this time, she was struggling to become independent from an abusive domestic partner who controlled everything. The control extended to the claimant's unemployment claim at the time that the separation determination was issued. *See* Consolidated Finding # 1.¹ Despite this, the

¹ While not expressly incorporated into the review examiner's findings, the claimant's testimony about her experience with domestic abuse referenced here and below, 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

review examiner declined to incorporate this into her consolidated findings as a reason for filing the late appeal. *See Consolidated Findings ## 15 and 18.*

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). A review examiner is not required to believe self-serving, unsupported, evidence, even if it is uncontroverted by other evidence. *McDonald v. Dir. of Division of Employment Security*, 396 Mass. 468, 470 (1986). However, in this case, given the evidence showing a confluence of factors that prevented the claimant from freely navigating her unemployment claim at the time, we believe that the review examiner's findings are unreasonably narrow.

There is no question that, during her testimony, the claimant was confused about the dates and did not fully understand the review examiner's questions. In considering this, however, we note that the claimant testified that she is not a native English speaker, and that she did not have a Spanish interpreter during the initial hearing. Ordinarily, parties are afforded an opportunity to ensure that such interpreters are provided by selecting their primary language preference when they file their claim. But here, the claimant did not file her own claim because she was not computer savvy. Her ex-partner did. *See Consolidated Finding ## 2, 4, 5, and 8.*²

Adding to her confusion, the claimant explained that, during this time, she was struggling to separate from this ex-partner. She had moved into a hotel, a shelter, experienced homelessness, and eventually found an apartment for domestic violence survivors in August, 2024. She further testified that, over the course of her 15-year relationship, the partner had come to control everything. When the ex-partner filed this 2024-01 unemployment claim, she was not only the only one who knew the password, but she selected electronic correspondence without telling the claimant. *See Consolidated Findings ## 4, 5, and 7.* Her ex-partner told her that she would receive DUA correspondence via U.S. Mail. *See also Consolidated Finding # 18.* This was one of the reasons the claimant missed seeing the electronic notice about the separation determination.

In her credibility assessment, the review examiner states that, because the claimant was checking her UI Online inbox in September and October, 2024, she was aware of the separation determination yet failed to file the appeal at that point. This ignores the claimant's testimony that the language barrier prevented her from fully comprehending notices that she read from the DUA, and that she continued to struggle with the psychological effects of separating from this domestic abuse relationship.

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 The claimant's testimony about her primary language, difficulty understanding English, and the filing of her claim discussed below, is also part of the unchallenged evidence in the record.

Given the Legislature's and the DUA's express intent to afford special consideration to survivors of domestic abuse, we believe this is a situation where the unemployment statute "is to be construed liberally in aid of its purpose, which purpose is to lighten the burden" which falls on the unemployed worker. G.L. c. 151A, § 74.³ In short, the record as a whole provides substantial evidence that a reasonable mind would accept as adequate to support the conclusion that the claimant did not receive the separation determination at the time it was issued. Further, it shows that she promptly appealed it upon finally obtaining guidance from a domestic violence social worker and the assistance of a DUA agent in November, 2024. *See Consolidated Finding # 20.*

We, therefore, conclude as a matter of law that the claimant has met the criteria to file a late appeal pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.15(3).

The review examiner's decision is reversed. The claimant is entitled to have a hearing on the merits of her separation determination in Issue ID 334-FFPM-R4LM.⁴

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 30, 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.

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³ *See, e.g.* G.L. c. 151A, §§ 1 ½; 25(e), paragraph 8; 430 CMR 4.01(8)(8); and 430 CMR 4.14(11).

⁴ Formerly UI Online Issue ID # 0082 7614 95.