

DUA issued the claimant a Notice of Disqualification to his FastUI inbox. That same day, he reviewed the notice and submitted documentary evidence disputing the substance of the determination. He did not submit the hearing request until later and missed the statutory application deadline. Board deemed his prompt submission of documents that were responsive to the determination to be a timely appeal.

**Board of Review
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Issue ID: N6-FMKP-27TM

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 August 31, 2020, the DUA issued to the claimant a Notice of Non-Monetary Determination — Identity Verification (Notice), stating that the claimant was not eligible for Pandemic Unemployment Assistance (PUA) benefits, because he had failed to provide sufficient documentary evidence to verify his identity. The claimant appealed the determination on October 6, 2020, 36 days after the Notice was issued. On December 1, 2020, the DUA issued a Notice of Non-Monetary Issue Determination — Late Appeal, stating that the claimant did not have good cause for submitting his appeal after the statutory deadline. The claimant appealed. Following a hearing on the merits, the review examiner affirmed the agency’s initial determination in a decision rendered on September 7, 2021. We accepted the claimant’s application for review.

The issue before the Board is whether the review examiner’s decision, which concluded that the claimant did not have good cause or justification for failing to file a timely appeal because he viewed the Notice on the day it was issued but did not file an appeal until 36 days later, 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 Pandemic Unemployment Assistance (PUA) which was determined to be effective May 24, 2020.
2. The claimant elected to receive electronic correspondence from the Department of Unemployment Assistance (DUA) on his PUA profile.

3. On August 31, 2020, the DUA issued the claimant a Notice of Non-Monetary Issue Determination-Identity Verification (the Notice) in issue ID N6-FJH8-P435. The Notice read, in relevant part, “If you disagree with this determination you have the right to file an appeal. Your appeal must be received within 30 calendar days from the issue date of this determination.”
4. The claimant read the Notice in his PUA account on August 31, 2020.
5. After reading the Notice and finding out about the determination, the claimant tried to upload the documents he thought were needed.
6. The claimant was not checking his emails on a regular basis and thought he would be getting correspondence from the DUA by mail.
7. The claimant does not recall seeing the New Correspondence Alert dated August 29, 2020. He did not know if it went into his spam account. The claimant only started checking his spam account in May 2021.
8. The claimant called the DUA before filing his appeal and was told to get it in as soon as possible.
9. No one from the DUA discouraged the claimant from filing an appeal.
10. On October 6, 2020, 36 days after the Notice was issued, the claimant filed an appeal regarding the Notice on the PUA website.

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 original 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 lacked good cause for failing to file a timely appeal.

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. . . . (Emphasis added).

While the review examiner acknowledged that the claimant had uploaded certain documentation on the same day he received the Notice, she considered only whether the claimant had good cause

for failing to file a timely appeal until October 6, 2020. We believe this analysis is predicated on the erroneous assumption that the claimant did not file an appeal before October 6, 2020.

A review of the DUA's electronic record-keeping system, FastUI, shows that the claimant received a Notice of Non-Monetary Issue Determination — Identity Verification (Notice) on August 29, 2020, with an issue date of August 31, 2020.¹ The claimant received and read the Notice on the day it was issued. Finding of Fact # 4. That same day, he attempted to upload the documents he believed were necessary to dispute the determination. See Finding of Fact # 5. While the claimant may not have been able to complete his upload, a review of the FastUI system confirms that he did successfully provide the DUA with some documentary evidence relevant to the August 31, 2020, determination. By providing these documents, the claimant evinced his clear intent to dispute the substance of the Notice through the formal appeals process. As such, we decline to penalize the claimant on the ground that he did not submit a formal appeal. We deem the claimant's appeal to have been timely filed on August 29, 2021, 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 DUA Issue ID # N6-FJH8-P435.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 29, 2021



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

¹ For the purposes of determining the timeliness of a claimant's appeal, the DUA uses the issue date printed on the Notice, even if the Notice is actually transmitted to the claimant on an earlier date. A review of the claimant's online PUA account shows that the Notice was issued to the claimant's PUA inbox on August 29, 2020, even though the Notice itself listed the issue date as August 31, 2020.

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.

LSW/rh