

Where a timely alert was sent to the claimant’s personal email address on file with the DUA to look at her PUA account, but she failed to do so because she had returned to work, the claimant has not established good cause for filing a late appeal.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: N6-FNMF-TNN4

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

The claimant had an unemployment claim, effective March 15, 2020. On September 16, 2020, the DUA issued a determination (September 16, 2020, Notice), which found that the claimant was not eligible to receive benefits. The claimant appealed the determination to the DUA hearings department on October 26, 2020. On December 16, 2020, the DUA sent the claimant another determination (December 16, 2020, Notice), this time finding that the appeal was not timely. The claimant timely appealed the December 16, 2020, Notice to the hearings department. Following a hearing on the merits, the review examiner affirmed the agency’s December 16, 2020, Notice and denied the claimant’s request for a hearing on the merits of the September 16, 2020, Notice.

Benefits were denied after the review examiner determined that the claimant did not provide good cause for her late appeal of the September 16, 2020, Notice, as required under G.L. c. 151A, § 39(b). 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 whether the claimant received an email alert from DUA to look for a letter notifying her of the September 16, 2020, Notice. Thereafter, 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 check her PUA account for correspondence did not constitute good cause for a late appeal, 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 Pandemic Unemployment Assistance (PUA) which was determined to be effective March 15, 2020.

2. The claimant elected to receive electronic correspondence from the Department of Unemployment Assistance (DUA) on her PUA profile.
3. Prior to September 16, 2020, the claimant went back to work.
4. After returning to work, the claimant chose to stop checking her PUA account.
5. On or about September 16, 2020, the DUA sent an email to the claimant's email notifying her that there was correspondence in her PUA account.
6. On September 16, 2020, the DUA issued the claimant a Notice of Non-Monetary Issue Determination COVID-19 Eligibility (the Notice) in Issue ID [XX-XXXX-XXXX]. 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."
7. The Notice was properly delivered to the claimant's PUA inbox.
8. When the claimant signed into her PUA profile in preparation for the upcoming tax season, she realized that she had unread letters in her inbox. The claimant read the Notice on October 26, 2020.
9. The claimant was not experiencing any problems with her PUA, or personal, email account, nor was she discouraged by anyone from filing an appeal regarding the Notice.
10. On October 26, 2020, 40 days after the initial determination, the claimant filed an appeal regarding the Notice on the PUA website.

Credibility Assessment:

During the hearing, the claimant testified that she did not receive any email notification regarding the determination dated September 16, 2020, and only saw the determination when she logged into her PUA account on October 26, 2020, in preparation of her taxes. The claimant testified that she did not have any problems with her email or her PUA account. The claimant's testimony that she did not receive (was not sent) the email notification regarding the determination on or about September 16, 2020, is not credible. The claimant testified that she had no problems with her personal email. No evidence was presented during the hearing to indicate that the DUA's online system was not properly issuing emails or notices. Moreover, because the claimant had returned to work sometime before September 16, 2020, and was no longer filing for benefits, she was not paying attention to correspondence from the department. Although the claimant chose not to check her inbox or read the Notice until October 26, 2020, the claimant received the letter when it was properly delivered to her inbox on September 16, 2020, and after she was sent an email notifying her of the Notice.

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 original 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. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant has failed to establish that there is good cause for her appeal.

In order to obtain PUA benefits, the claimant must follow many of the terms and conditions of state law that apply to claims for regular unemployment benefits.¹ This includes G.L. c. 151A, § 39(b), which provides, "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 regulations specify circumstances which constitute good cause for filing a late appeal within the meaning of G.L. c. 151A, § 39(b). 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.

The DUA alerts claimants of important notices related to their claims by sending an email to the email address which the claimant provided to the DUA. Here, an email alert was timely sent to the claimant's personal email address regarding the subject September 16, 2020, Notice. *See* Consolidated Finding # 7. The claimant did not have any problems with her personal email or her PUA inbox. *See* Consolidated Fact # 9. No evidence was presented by the claimant that the DUA email alert protocols or system failed to provide notice to her personal email. Rather, she admitted that her attention was no longer focused upon PUA issues, including the need to periodically access her PUA portal, because she had returned to the work force. *See* Consolidated Fact # 4. Although

¹ *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(11)(c).

the claimant asserted that she did not receive the email to look in her PUA account, the review examiner did not find this statement to be credible.

We note that, in rendering her consolidated finding, the review examiner provided a detailed credibility assessment. “The review examiner bears ‘[t]he responsibility for determining the credibility and weight of [conflicting oral] testimony, . . .’” Hawkins v. Dir. of Division of Employment Security, 392 Mass. 305, 307 (1984), *quoting* Trustees of Deerfield Academy v. Dir. of Division of Employment Security, 382 Mass. 26, 31–32 (1980). Such credibility assessments are therefore 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). On the basis of the evidence in the record before us, we decline to disturb the review examiner’s credibility assessment.

In short, the record indicates that the claimant simply ignored DUA’s email correspondence. That is not a reason listed under 430 CMR 4.15, which constitutes good cause for filing a hearing request more than 30 days after DUA issues a determination.

We, therefore, conclude as a matter of law that the claimant did not have good cause for filing a late appeal within the meaning of G.L. c. 151A, § 39(b) or 430 CMR 4.15.

The review examiner’s decision is affirmed. The claimant is not entitled to a hearing on the merits the September 16, 2020, Notice.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 5, 2022



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.

BGM/rh