

**Claimant timely appealed a monetary determination, rather than the work authorization determination that DUA had issued days later. Because claimant’s hearing request stated that she was appealing the work authorization determination, and, upon discovering the error, she immediately appealed the correct issue, the Board held she had good cause for a late appeal pursuant to G.L. c. 151A, § 39(b).**

**Board of Review  
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**Issue ID: N6-FRJ7-JPTV**

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 good cause for filing a late hearing request. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On August 28, 2020, the DUA issued to the claimant a Notice of Non-Monetary Determination – Work Authorization (work authorization determination), stating that the claimant was not eligible for Pandemic Unemployment Assistance (PUA) benefits, because she had failed to provide sufficient documentary evidence to verify her authorization to work. The claimant filed a hearing request on November 30, 2020, 94 days after the work authorization determination was issued. On January 29, 2021, the DUA issued a Notice of Non-Monetary Issue Determination – Late Appeal, stating that the claimant did not have good cause for submitting her appeal after the statutory deadline (late appeal determination). The claimant appealed. Following a hearing on the merits, the review examiner affirmed the agency’s late appeal 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 of her underlying work authorization determination, where she responded to the incorrect determination notice, 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 March 15, 2020.
2. The claimant elected to receive electronic correspondence from the Department of Unemployment Assistance (DUA) on his [sic] PUA profile.

3. On August 28, 2020, the DUA issued the claimant a Notice of Non-Monetary Issue Determination Work Authorization (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.”
4. On August 28, 2020, the claimant received the Notice when it was properly placed in her PUA account inbox.
5. The claimant, read the Notice on the PUA website shortly after its issuance.
6. After reading the Notice and finding out about the determination, the claimant submitted an online appeal on September 17, 2020. The claimant mistakenly appealed the monetary determination letter [XXXXXXXXXXXX], not the Notice.
7. The claimant was not experiencing any problems with her emails, and no one discouraged her from filing an appeal to the Notice.
8. On November 30, 2020, 90 days after the initial determination, 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, except that the appeal occurred 94 days after the work authorization determination and not 90 days as stated in Finding of Fact # 8. 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).

Finding of Fact # 3 states that the claimant received the work authorization determination on August 28, 2020. It informed her that she had not sufficiently proven she was legally authorized

to work in the United States.<sup>1</sup> On September 17, 2020, following a phone call with DUA on another issue, the claimant filed an appeal of a different determination (monetary determination), which she had received on August 23, 2020. She did this by mistake. *See* Finding of Fact # 6. Moreover, in that hearing request, the claimant asserted that she had presented sufficient evidence to establish her authorization to work and requested a hearing. This shows that she intended to appeal the work authorization issue on September 17, 2020, but mistakenly appealed a different determination, which was issued only a few days before.

During the hearing, the claimant testified that she did not learn of the problem until she contacted the DUA on November 30, 2020, whereupon she immediately appealed her work authorization determination.<sup>2</sup> *See* Finding of Fact # 8.

Where the claimant's September 17, 2020, hearing request of a different determination addressed the basis for appealing her work authorization determination, it was filed well within 30 days, and she corrected the error immediately upon learning of it, we decline to penalize her for formally appealing the wrong issue. We deem her late appeal of the work authorization determination to have been timely filed. *See* Board of Review Decision N6-H67D-F38K (Oct. 13, 2021).

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

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<sup>1</sup> Exhibit 1 is the work authorization determination. Although not in the findings of fact, this 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).

<sup>2</sup> Again, although not in the findings, this portion of the claimant's testimony is also part of the unchallenged evidence introduced at the hearing and placed in the record. We also note that staff entries in the DUA's electronic record-keeping system, FAST UI, document these calls to the DUA during this period.

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the work authorization determination dated August 28, 2020.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 6, 2022**



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](http://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.

MS/rh