

Claimant’s mistaken belief that he did not have to appeal his COVID-eligibility determination because he thought it was being heard during his identity verification hearing, did not constitute good cause under G.L. c. 151A, § 39(b), for filing an appeal late, 47 days after the DUA’s determination.

**Board of Review
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Issue ID: N6-H2RV-6LLR

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

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020, which was denied in both an identity verification determination issued on December 16, 2020, and a COVID-eligibility determination issued on December 18, 2020. The claimant filed a timely appeal of the identity verification determination, which resulted in a reversal of the denial, following a hearing on January 20, 2021. The claimant filed a request for a hearing of the COVID-eligibility determination on February 2, 2021. This request was dismissed in a determination issued on March 4, 2021, because the appeal was filed after the statutory deadline. The claimant appealed this March 4, 2021, determination. Following a hearing, the review examiner affirmed, denying the claimant’s request for a hearing on the underlying COVID-eligibility determination in a decision rendered on July 22, 2021. We accepted the claimant’s application for review.

Benefits were denied after the review examiner concluded that the claimant did not provide good cause for his late appeal of the COVID-eligibility determination, 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 for further subsidiary findings from the record concerning the claimant’s reasons for his late appeal. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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 belief that both determinations were being addressed in the July 20, 2021, hearing, failed to 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 his PUA profile.
3. The claimant did not have any issues with receiving electronic correspondence from the DUA.
4. On December 18, 2020, the DUA issued the claimant a Notice of Non-Monetary Issue Determination COVID-19 Eligibility (the Notice) in issue ID N6-FN42-PV86. 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."
5. The claimant received the Notice when it was properly delivered to his PUA account.
6. The claimant did not appeal the Notice because he had previously appealed his identity verification denial and a hearing was scheduled for January 20, 2021. The claimant mistakenly thought that both issues would be addressed at the January 20th hearing, through the prior appeal that he had filed.
7. The claimant did not contact the DUA to inquire about the Notice or discuss any confusion he may have had about it.
8. On January 20, 2021, 34 days after [sic] Notice was issued, the claimant had a virtual identity verification hearing. Based on some of the questions the review examiner asked during the hearing, the claimant mistakenly assumed the COVID-19 eligibility issue was also being addressed through this hearing.
9. On January 28, 2021, 42 days after the Notice was issued, the claimant received the decision reversing the identity verification denial on his claim.
10. On February 1, 2021, 46 days after the Notice was issued, the claimant called DUA customer service after he continued to be denied payment for his weekly claims. The DUA representative told the claimant that the identity verification denial on his claim had been reversed, but there was a COVID-19 eligibility denial still on the claim that would have to be appealed separately.
11. When the claimant told the representative he believed the review examiner had said the COVID-19 eligibility issue was being addressed during his hearing on

January 20th, the representative advised the claimant to wait for the new determination to update in the system to be sure he had been fully approved.

12. The claimant did not rely upon the DUA representative's instructions to wait for the new eligibility determination on the COVID-19 eligibility issue on his claim. He called DUA customer service again on February 2, 2021.
13. The DUA representative with whom the claimant spoke on February 2, 2021, advised him that the identity verification denial was the only issue that was heard on January 20, 2021. The claimant was informed he also had a COVID-19 eligibility denial that would have to be appealed separately.
14. No one discouraged the claimant from filing an appeal.
15. On February 2, 2021, shortly after his conversation with the second DUA representative, the claimant appealed the Notice on the PUA website, 47 days after the determination was issued.

Credibility Assessment:

There is no dispute the claimant timely received the Notice. The claimant's testimony that he waited two or three weeks after his conversation with a DUA representative on February 1, 2021, to file his appeal is not credible as agency records show the claimant called the DUA again on February 2, 2021, and filed his appeal that same day. Even if the claimant mistakenly believed the disqualification contained in the Notice would be included in his January 20th hearing on a separate disqualification, there is no evidence a DUA employee discouraged him from filing an appeal. In fact, the claimant did not contact DUA about the Notice or any confusion he had surrounding it, until well after the 30 days had elapsed.

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 a basis for allowing his late 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

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

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), and allow, under a few circumstances, a party to file an appeal beyond 30 days from the original determination. 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.

The consolidated findings show that the claimant elected to receive electronic correspondence from the DUA and had no issues with receiving this correspondence. *See Consolidated Findings ## 2 and 3.* Further, there was no evidence presented by the claimant that the DUA email alert protocols or system failed to provide notice to his personal email. Rather, the claimant received the December 18, 2020, COVID-eligibility determination but waited 47 days to appeal the determination. *See Consolidated Findings ## 5 and 15.* In his appeal to the Board, the claimant asserts that the hearing officer's questions during the identity verification hearing, coupled with the proximity of the two determinations being issued, led him to believe that both issues were being resolved in that hearing.

In deciding whether the claimant's reason for filing his request for hearing more than the 30-days after the determination date constitutes good cause, we must determine whether the reason falls within any of the listed exceptions under 430 CMR 4.15.

According to the consolidated findings, the claimant offered several reasons for his delay in appealing his COVID eligibility denial. Namely, he failed to appeal the COVID-eligibility determination since he had appealed his identity verification denial and a hearing was scheduled for January 20, 2021. *See Consolidated Finding # 6.* He mistakenly thought that both issues would be addressed at the January 20th hearing. *See Consolidated Finding # 6.* Lastly, based on some of the questions the review examiner asked during the hearing, the claimant mistakenly assumed that the eligibility issue was also being addressed through the identity verification hearing. *See*

Consolidated Finding # 8. Although his confusion is understandable, none of these reasons fall within the listed exception under 430 CMR 4.15.

We are also mindful that the record shows that the claimant was told by a DUA agent to wait for a new determination before appealing the COVID eligibility determination. This instruction might otherwise fall within the exception of 430 CMR 4.15(1), but for the fact that the conversation took place on February 1, 2021, 46 days after the determination notice was issued. *See* Consolidated Finding # 11. Thus, even if we were to view the agent's February 1, 2021, advice to wait as discouraging the claimant from requesting a hearing, this advice was not the reason the claimant missed the statutory deadline. Further, it did not discourage him from finally filing his appeal, as he filed it the next day. *See* Consolidated Findings ## 12, 13, and 15.

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 December 16, 2020, COVID-eligibility determination.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 4, 2022



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.

BGM/rh