

**The claimant filed her hearing request 57 days after receiving a disqualifying PUA determination, when a DUA representative advised her that she could submit a late appeal. Where the reason for the claimant’s failure to timely request a hearing pursuant to the statutory deadline under G.L. c. 151A, § 39(b), was because she was too discouraged by the disqualification to read the entire determination notice, held this did not constitute good cause for missing the deadline.**

**Board of Review  
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**Issue ID: N6-H57M-JHTM**

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 we affirm.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020. On January 26, 2021, the DUA issued a Notice of Non-Monetary Issue Determination denying benefits based upon an issue of COVID-19 Eligibility (COVID-19 Eligibility), which she appealed on March 24, 2021. On March 31, 2021, the DUA issued a determination denying her appeal of the COVID-19 Eligibility issue due to filing the appeal late without justification (Late Appeal). She timely appealed this Late Appeal determination. Following a hearing on the Late Appeal determination, the review examiner affirmed the agency’s determination in a decision rendered on September 8, 2021.

The review examiner concluded that the claimant did not have justification for failing to timely file an appeal of the COVID-19 Eligibility determination pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14–4.15. Thus, she was not entitled to a hearing on the merits of the COVID-19 Eligibility determination. The Board accepted the claimant’s application for review.

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 obtain more information about when the claimant read the underlying determination and her communications with DUA representatives. After the remand hearing, the review examiner issued his 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 did not have good cause for the late appeal of the COVID-19 Eligibility determination, is supported by substantial and credible evidence and is free from error of law, where the claimant failed to read enough of the determination to realize that she had appeal rights.

## 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. On January 26, 2021, the DUA issued the claimant a Notice of Non-Monetary Issue Determination COVID-19 Eligibility ("the Notice") in issue ID N6-H2D3-65NR. 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 January 26, 2021, the claimant received the Notice when it was properly placed in her PUA account inbox. She first read the Notice, in part, on that date.
5. The claimant read the beginning of the Notice, learned that she was disqualified, did not read further, and took no action because she felt discouraged. The claimant did not see the information about her right to appeal the Notice.
6. On or about February 1, 2021, approximately six days after receiving the Notice, the claimant called the DUA to ask why she had been disqualified. Representative 1 told the claimant that the Notice was final and that there was nothing she (the representative) could do. The representative did not mention the claimant's right to appeal the Notice. After that conversation, the claimant was not aware that she could appeal the Notice.
7. It is unknown whether the claimant attempted to re-read the Notice herself in full at any point.
8. On an unknown date, the claimant called the DUA a second time. Representative 2 told the claimant that she could appeal the Notice, but that such an appeal would be late.
9. On March 24, 2021, 57 days after the Notice, the claimant filed an appeal regarding the Notice on the PUA website.

## Credibility Assessment:

Overall, this examiner finds the claimant's testimony and evidence to be credible. The claimant's testimony was consistent, persuasive, detailed, and she was very forthright in her answers to the examiner's questions during the remand hearing.

## 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. After 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. After remand, we also agree with the review examiner's legal conclusion that the claimant is not entitled to a hearing on the merits of the January 26, 2021, COVID-19 Eligibility determination.

Because the claimant did not timely file an appeal of the COVID-19 Eligibility determination, we must look to the applicable statute and regulations to determine whether the claimant had good cause for being late.

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. . . .

In this case, the claimant filed her appeal 57 days after the DUA issued its determination. Consolidated Finding # 9. DUA regulations specify circumstances that 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 review examiner concluded that the claimant failed to provide a reason for filing a late appeal that falls within the reasons listed in 430 CMR 4.15. Specifically, the claimant did not read enough of the determination to learn of her appeal rights. As the consolidated findings now provide, she stopped reading because she felt discouraged by the denial of benefits. *See Consolidated Finding # 5.*

We consider the fact that the claimant contacted a DUA representative approximately six days after seeing the January 26, 2021, COVID-19 Eligibility Notice to ask why she had been denied benefits. Consolidated Finding # 6. Apparently, the DUA representative told the claimant that the Notice was final and that there was nothing she (the representative) could do. We do not view this statement to be anything further than the representative confirming that she did not have the authority to change the determination. The fact that the representative did not mention the claimant's right to appeal the Notice does not mean that she discouraged the claimant from submitting an appeal as meant under 430 CMR 4.15(1).

The claimant received written notice of her right to appeal and the deadline for doing so in the original determination. She chose not to read it. It is understandable that she felt discouraged at the notion of being disqualified from receiving unemployment benefits, however, that is not among the reasons listed for allowing an appeal filed beyond the statutory deadline.

We, therefore, conclude as a matter of law that the claimant did not have good cause to file her appeal beyond the statutory appeal deadline under G.L. c. 151A, § 39(b).

The review examiner's decision is affirmed. The claimant is not entitled to a hearing on the merits of the January 26, 2021, COVID-19 Eligibility determination.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 20, 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](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.

CLC/AB/rh