

The claimant failed to file a timely appeal to a COVID-19 eligibility determination. Because the claimant timely filed an appeal to a subsequent identical determination, the Board deemed the appeal timely filed pursuant to G.L. c. 151A § 39(b). The claimant is entitled to a hearing on the merits of the COVID-19 eligibility disqualification.

**Board of Review
100 Cambridge Street, Suite 400
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-H5V6-8V24

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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective February 2, 2020. On November 20, 2020, the DUA issued a Notice of Non-Monetary Issue Determination denying benefits based on COVID-19 Eligibility (COVID-19 eligibility determination). The claimant did not request a hearing at that time. On April 8, 2021, the DUA issued another copy of the determination denying benefits based on COVID-19 Eligibility (April 8th notice), which the claimant timely appealed. On April 8, 2021, the DUA issued a Notice of Non-Monetary Issue Determination denying his request for a hearing on the COVID-19 eligibility determination due to filing a late appeal, without good cause (late appeal determination). He 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 June 30, 2022.

The review examiner concluded that the claimant did not have good cause for failing to timely file an appeal of the November 20, 2020, COVID-19 eligibility determination pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14–4.15. Thus, he was not entitled to a hearing on the merits.

The Board accepted the claimant's application for review. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant is not entitled to a hearing on the merits of the COVID-19 eligibility determination because he filed his appeal beyond the statutory deadline without demonstrating good cause, is supported by substantial and credible evidence and is free from error of law, where he timely appealed a duplicate determination.

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 February 2, 2020.
2. The claimant elected to receive electronic correspondence from the Department of Unemployment Assistance (DUA) on his initial application for PUA benefits.
3. The claimant filed his initial application for PUA benefits himself.
4. On November 20, 2020, the DUA issued the claimant a Notice of Non-Monetary Issue Determination – COVID-19 Eligibility (the Notice). 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 on November 19, 2020, when it was properly placed in his PUA inbox.
6. The claimant logged into his PUA account on the day the Notice was placed in his inbox and on multiple additional dates thereafter prior to the end of the 30-day deadline to appeal.
7. On February 10, 2021, the claimant changed his preferred method of communication to paper delivery by the U.S. Post Office.
8. No representative of the DUA discouraged the claimant from filing an appeal. No employer threatened, harassed, or intimidated the claimant to prevent him from filing an appeal.
9. On April 7, 2021, 138 days after the Notice was issued, the claimant filed an appeal regarding the Notice in his PUA account.

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. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject Findings of Fact ## 5 and 6 as not fully supported by the record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, we disagree with the review examiner's legal conclusion that the claimant is not entitled to a hearing on the merits of the COVID-19 eligibility determination.

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. . . .

Although not in the findings, the record includes two COVID-19 eligibility determinations that disqualified the claimant from receiving benefits. One was issued on November 20, 2020. *See* Finding of Fact # 4. A second determination was issued on April 8, 2021, which was identical in all ways except for the later date. *See* Exhibit 5.¹ Nothing in the record or in the DUA's electronic recordkeeping system (FAST UI) explains why the DUA reissued its determination. Since he promptly appealed this April 8, 2021, COVID-19 eligibility determination within the 10-day statutory deadline under G.L. c. 151A, § 39(b), it was not late.

Under these circumstances, we decline to penalize the claimant for not appealing the COVID-19 eligibility determination issued on November 20, 2020. In our view, the claimant's timely appeal of the identical April 8, 2021, COVID-19 eligibility determination entitles him to a hearing on the merits.

We, therefore, conclude as a matter of law that, pursuant to G.L. c. 151A, § 39(b), the claimant's hearing request was timely filed.

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the November 20, 2020, COVID-19 eligibility determination.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 15, 2023



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

Member Michael J. Albano 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.

JCT/rh