

**The claimant filed an appeal of an identity verification issue, but inadvertently attached the appeal to a different monetary determination. Where the substance of his appeal addressed identity verification and it was filed nearly simultaneously with issuance of the determination, Board deemed the hearing request to have been timely filed pursuant to G.L. c. 151A, § 39(b).**

**Board of Review  
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**Issue ID: N6-H67D-F38K**

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

On October 28, 2020, the DUA issued to the claimant a Notice of Non-Monetary Determination – Identity Verification (Notice), stating that the claimant was not eligible for Pandemic Unemployment Assistance (PUA) benefits, because he had failed to provide sufficient documentary evidence to verify his identity. The claimant appealed the determination on April 14, 2021, 168 days after the Notice was issued. On April 16, 2021, the DUA issued a Notice of Non-Monetary Issue Determination – Late Appeal, stating that the claimant did not have good cause for submitting his appeal after the statutory deadline. The claimant appealed. Following a hearing on the merits, the review examiner affirmed the agency’s initial determination in a decision rendered on July 23, 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 where he 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 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 July 5, 2020.
2. The claimant elected to receive electronic correspondence from the Department of Unemployment Assistance (“DUA”) on his profile.

3. On October 28, 2020, the DUA issued the claimant a Notice of Non-Monetary Issue Determination—Identity Verification (“Determination”). The Notice read, in relevant part, “If you disagree with this determination, you may request a hearing a hearing on (appeal) this redetermination. Your appeal must be received within 30 calendar days from the issue date of this determination.”
4. The claimant received and read the Notice on the PUA website after its issuance.
5. The clamant was not having any problems with his email and no one from DUA discouraged him from appealing.
6. On April 14, 2021, the claimant appealed the October 28th determination, one hundred and sixty-eight (168) days after the determination.

### 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. 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).

A review of the DUA’s electronic record-keeping system, FastUI, shows that the claimant received a Notice of Non-Monetary Issue Determination - Identity Verification on October 27, 2020, informing him that he had not presented sufficient evidence to verify his identity. That same day, the claimant filed an appeal of a Notice of Monetary Determination he had received on October 25, 2020. In this appeal, the claimant asserted that he had presented sufficient evidence to establish his identity and requested a hearing on the matter of identity verification. This activity on FastUI shows that he intended to file an appeal of the identity verification issue on October 27, 2020, but mistakenly filed the appeal in response to a monetary determination issued only a few days earlier.

During the hearing, the claimant testified that, after filing this appeal, he contacted the DUA on several occasions to check on the status of his claim. He stated that DUA representatives informed him that his appeal had been received and they had requested that DUA expedite his hearing.

According to the claimant, DUA representatives did not identify that the claimant had filed his appeal on the incorrect determination for several weeks.<sup>1</sup>

Where the claimant's October 27, 2020, hearing request addressed the basis for appealing his identity verification determination, and it was filed nearly simultaneously with issuance of the actual identity verification determination, we decline to penalize him for formally appealing the wrong issue. We deem his appeal of the present issue to have been timely filed. *See* Board of Review Decision 0021 9945 62 (Aug. 21, 2017).

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

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

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 13, 2021**



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.

LSW/rh

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<sup>1</sup> Although not in the findings of fact, this portion of the claimant's testimony 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). We also note that staff entries in FAST UI document these calls to the DUA during this period.