

The claimant demonstrated that he intended to file an appeal of an employment substantiation determination, but inadvertently attached the appeal to a monetary re-determination. Where the substance of his appeal addressed employment substantiation, and it was filed the same day of the issuance of the employment substantiation determination, the 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-H8V4-8KLD

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 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 an effective date of March 15, 2020. On April 21, 2021, the DUA issued to the claimant a Notice of Non-Monetary Issue Determination — Employment Substantiation (employment substantiation determination), informing the claimant that he was not eligible for PUA, because he failed to provide sufficient documentation to substantiate his employment, self-employment or the planned commencement of employment or self-employment. The claimant appealed the employment substantiation determination on June 23, 2021, 64 days after it was issued. On July 9, 2021, the DUA issued the claimant a Notice of Non-Monetary Issue Determination — Late Appeal (late appeal determination), informing the claimant he did not have good cause to file his appeal late. The claimant appealed. Following a hearing on the merits, the review examiner affirmed the agency’s late appeal determination in a decision rendered on December 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 failed to establish that there was good cause within the meaning of G.L. c. 151A, § 39(b) to file his appeal late, is supported by substantial and credible evidence and is free from error of law, where the claimant mistakenly appealed the incorrect 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 March 15, 2020, with a weekly benefit amount of \$267.

2. The claimant elected to receive electronic correspondence from the Department of Unemployment Assistance (DUA) on his PUA profile.
3. On April 21, 2021, the DUA issued the claimant a Notice of Non-Monetary Issue Determination – Employment Substantiation. 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. The claimant received the Notice of Non-Monetary Issue Determination – Employment Substantiation eligibility on April 21, 2021, when it was properly placed in his PUA account.
5. The claimant initially filed an appeal using the wrong letter ID.
6. On June 23, 2021, 64 days after the Notice of Non-Monetary Issue Determination – Employment Substantiation was issued, the claimant filed an appeal, using the correct the letter ID.

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 and deems them to be supported by substantial and credible evidence. As discussed more fully below, we disagree with the review examiner’s legal conclusion that the claimant lacked good cause for failing to timely file his appeal.

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 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. . . .

The claimant received the employment substantiation determination on April 21, 2021. *See* Finding of Fact # 4. During the hearing, the claimant testified that he contacted the DUA on June 23, 2021, informing them of his error in filing an appeal to the wrong determination.¹ We note that the DUA’s electronic database for PUA (Fast UI) shows the claimant read the determination on April 21, 2021, and spoke with DUA representatives on April 21, May 3, May 11, and June 23,

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).

2021. On April 21, 2021, the claimant filed an appeal to a different determination, Notice of Monetary Re-Determination originally dated March 22, 2021 (monetary redetermination). *See* Finding of Fact # 5.² On June 23, 2021, the claimant filed an appeal of the employment substantiation determination and noted on his appeal that he initially filed his appeal to the wrong determination. *See* Finding of Fact # 6.

We believe the claimant's testimony and entries in FAST UI in combination with the review examiner's findings show that he intended to file an appeal of the employment substantiation determination issued on April 21, 2021, but mistakenly filed the appeal in response to the monetary re-determination. Thus, the review examiner properly found that the claimant inadvertently filed his appeal using the wrong letter ID. *See* Finding of Fact # 5.

In Board of Review Decision 0021 9945 62 (Aug. 21, 2017), the claimant received two notices of disqualification from the DUA on two successive days, only appealed one of the determinations, but the substance of her appeal addressed both issues. Since the claimant filed an appeal to the other determination promptly after being notified by a DUA agent, the Board declined to penalize the claimant for not appealing the other determination.

Here, where the claimant's April 21, 2021, hearing request in substance addressed the basis for appealing his employment substantiation determination, and it was filed inadvertently in connection with the monetary re-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.

We, therefore, conclude as a matter of law that that the claimant is deemed to have timely filed his appeal within the statutory deadline 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 employment substantiation determination dated April 21, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 19, 2022



Paul T. Fitzgerald, Esq.
Chairman



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**

² FAST UI further shows that in that appeal, the claimant noted that he was providing documentation proving his employment and wanted to submit his paystubs, and on May 12, 2021, and June 17, 2021, the claimant uploaded three paystubs, a 2020 Form W-2 and his identification noting that this was proof of his employment in 2019.

(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.

DY/rh