

**The claimant demonstrated that she intended to file an appeal of a COVID-19 eligibility determination within the 30-day deadline, but mistakenly appealed a COVID-19 weekly claim denial that was issued on the same day. Where the claimant filed the correct appeal promptly after learning of the mistake from the DUA, 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-H9NV-V85M**

### 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 August 30, 2020. On June 7, 2021, the DUA issued to the claimant a Notice of Non-Monetary Issue Determination — COVID-19 Eligibility (COVID-19 eligibility determination) informing the claimant that she was not eligible for PUA, because she failed to provide sufficient documentation to show that she meets the program eligibility requirements under § 2102 of the CARES Act. The claimant appealed the COVID-19 eligibility determination on July 14, 2021, 34 days after it was issued. On July 26, 2021, the DUA issued to the claimant a Notice of Non-Monetary Issue Determination — Late Appeal (late appeal determination), informing the claimant that she did not have good cause to file her 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 January 11, 2022. We accepted the claimant’s application for review.

The review examiner concluded that the claimant did not have good cause for failing to timely file an appeal of the COVID-19 eligibility determination pursuant to G.L. c. 151A, § 39(b). Thus, she was not entitled to a hearing on the merits of the underlying determination. Our decision is based upon our review of the recorded testimony and evidence from the hearing, the review examiner’s decision, the claimant’s appeal, and the DUA’s electronic recordkeeping system, FAST UI.

The issue before the Board is whether the review examiner’s decision, which concluded that the claimant filed an untimely appeal because she stopped checking her PUA account, and thus failed to establish that there was good cause within the meaning of G.L. c. 151A, § 39(b), to file her appeal late, is supported by substantial and credible evidence and is free from error of law, where the claimant filed her appeal of the COVID-19 eligibility determination late because she mistakenly used the wrong letter ID when filing her appeal.

### Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. On September 14, 2020, the claimant filed a claim for Pandemic Unemployment Assistance (PUA) with an effective date of August 30, 2020.
2. The claimant's weekly benefit amount was determined to be \$267.
3. The claimant elected to receive electronic correspondence from the Department of Unemployment Assistance (DUA) on her initial PUA claim.
4. On June 7, 2021, DUA issued the claimant a Notice of Non-Monetary Issue Determination (Notice) related to a COVID-19 Eligibility issue. 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 June 7, 2021, when it was properly placed in her PUA account.
6. The claimant chose to stop checking her PUA account correspondence after the last week that she filed a weekly certification because she was no longer filing for PUA benefits.
7. When the claimant finally logged into her PUA account, she appealed the wrong letter ID.
8. The claimant called DUA about the Notice and was informed that she needed to file an appeal of it. No-one discouraged her from filing an appeal.
9. The claimant filed an appeal of the Notice on July 14, 2021, which was 37 days after the Notice was issued. The appeal was late.

### 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 her 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. . .

In accordance with the EUISSA and the DOL guidance, the DUA expanded the 10-day appeal deadline, allowing all PUA claimants a full 30-days to file an appeal. *See* Finding of Fact # 4.<sup>1</sup>

Finding of Fact # 9 provides that the claimant filed her appeal after the 30-day deadline, on day 37. The review examiner made a credibility assessment that the claimant's choice to stop checking her PUA account is what caused her to file a late appeal. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). "The test is whether the finding is supported by "substantial evidence." *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted). We cannot accept this finding as it is unsupported by substantial evidence.

The record shows that the claimant filed the late appeal because she appealed the incorrect determination. The claimant received the COVID-19 eligibility determination on June 7, 2021. *See* Finding of Fact # 5. The claimant testified that she was late responding to a document request that DUA had sent to her, and that, when she logged into her account, she saw the COVID-19 eligibility determination. She attempted to file an appeal, but she mistakenly appealed the wrong letter ID.<sup>2</sup> We note that FAST UI shows the claimant received a separate Notice of Non-Monetary Issue Determination – COVID-19 Eligibility, which was the result of the denial of a single weekly claim (weekly claim denial), also on June 7, 2021. It further shows that she appealed this determination on June 24, 2021, which was 17 days after that determination date.

We believe that the review examiner's findings in combination with the claimant's testimony and entries in FAST UI show that she intended to file an appeal of the COVID-19 eligibility determination issued on June 7, 2021, but mistakenly filed the appeal in response to the weekly claim denial. Thus, the review examiner properly found that the claimant inadvertently filed her appeal using the wrong letter ID. *See* Finding of Fact # 7.

In Board of Review Decision 0021 9945 62 (Aug. 21, 2017), a claimant received two notices of disqualification from the DUA on two successive days and only appealed one of the determinations, but the substance of her appeal addressed both issues. Since the claimant filed an

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<sup>1</sup> In March 2020, Congress enacted the Emergency Unemployment Insurance Stabilization and Access Act (EUISAA), which, among other things, permitted states to modify their unemployment compensation law and policies with respect to good cause on an emergency temporary basis as needed to respond to the spread of the COVID-19 pandemic. *See* EUISAA, Pub. Law 116-127 (Mar. 18, 2020), § 4102(b).

<sup>2</sup> 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).

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.

The holding in Board of Review Decision 0021 9945 62 applies here because the claimant similarly filed a late appeal as a result of mistakenly using an incorrect letter ID to appeal the underlying determination. As in the previous case, the claimant here promptly filed the correct appeal when DUA informed her of the mistake, so we decline to penalize her for formally appealing the wrong issue. Inasmuch as the claimant's appeal of the wrong issue was filed within 30 days, we deem her appeal of the correct issue to have been timely filed.

We, therefore, conclude as a matter of law that that the claimant timely filed her 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 COVID-19 eligibility determination dated June 7, 2021.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 24, 2023**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

**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.