

**The claimant demonstrated that she intended to file an appeal of an employment substantiation determination, but inadvertently filed an appeal of an unrelated monetary determination. Where the claimant’s appeal in substance addressed the basis for appealing her employment substantiation determination, was filed inadvertently in connection with the monetary redetermination within the allotted time to appeal, and the claimant filed her appeal immediately after learning of the mistake, 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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Chairman  
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Member  
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**Issue ID: N6-HD7J-2MDT**

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 8, 2020. On April 5, 2021, the DUA issued to the claimant a Notice of Non-Monetary Issue Determination — Employment Substantiation (employment substantiation determination) informing the claimant that she was not eligible for PUA, because she failed to meet the program eligibility requirements to substantiate employment, self-employment, or the planned commencement of employment or self-employment. The claimant appealed the employment substantiation determination on July 27, 2021, 114 days after it was issued. On August 2, 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, the review examiner affirmed the agency’s late appeal determination in a decision rendered on December 15, 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 her 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 8, 2020.

2. The claimant elected to receive electronic correspondence from the Department of Unemployment Assistance (DUA) on her PUA claim.
3. On April 5, 2021, the DUA issued the claimant a Notice of Non-Monetary Issue Determination (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.”
4. The claimant received the Notice on April 5, 2021, when it was properly placed in her PUA account.
6. The claimant called PUA [sic] on April 5, 2021, and spoke with an agent about the Notice and was told how to appeal. The claimant filed an appeal on April 5, 2021, but filed the wrong letter ID number.
7. The claimant called PUA [sic] on July 27, 2021, to check on the status of her appeal. The claimant was informed she filed appeal on a different Letter ID number. The claimant filed an appeal of the Notice on July 27, 2021, 114 days after the Notice was issued. The appeal was late.
8. The claimant stated on her late appeal filing that she has a diagnosis of ADHD and was nervous and confused when reading and filing her initial appeal which led to her appealing the wrong ID number.
9. On August 3, 2021, the DUA issued the claimant a Notice of Non-Monetary Issue Determination Late Appeal - No Justification. The claimant appealed 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. 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 is not entitled to a hearing on the merits of her employment substantiation 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 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 5, 2021. *See* Finding of Fact # 4. The claimant read the employment substantiation determination the day it was issued and spoke with a DUA representative who assisted her in filing an appeal over the phone, but they inadvertently appealed the incorrect letter ID.<sup>1</sup> *See also* Finding of Fact # 6. We note that the DUA's electronic database for PUA (FastUI) shows the claimant received a separate Notice of Monetary Redetermination (redetermination), on March 22, 2021, and that she appealed this redetermination on April 5, 2021, after speaking with a DUA representative. FastUI further shows that, as part of this appeal of the redetermination, the claimant discussed providing documents to prove self-employment, which would directly address the issue of employment substantiation.<sup>2</sup> On July 27, 2021, the claimant placed a call to the DUA and a representative informed her that her April 5, 2021, appeal addressed the monetary redetermination and not the employment substantiation determination, and she immediately filed the correct appeal. *See* Finding of Fact # 7.

We believe that the claimant's testimony and entries in FAST UI in combination with the review examiner's findings show that she intended to file an appeal of the employment substantiation determination issued on April 5, 2021, but mistakenly filed the appeal in response to an unrelated monetary determination within the 30-day deadline. 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), 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 correct determination promptly after learning of the mistake, and the substance of the appeal addressed the underlying issue, the Board declined to penalize the claimant for not appealing the correct determination within the 30-day deadline.

Where the claimant's April 5, 2021, hearing request in substance addressed the basis for appealing her employment substantiation determination, was filed inadvertently in connection with the monetary redetermination within the allotted time to appeal, and the claimant filed her appeal immediately after learning of the mistake, we decline to penalize her for formally appealing the wrong issue. We deem her 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).

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<sup>1</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).

<sup>2</sup> "I was confused about what information to send back proving I am self-employed and I do have proof. I am still not working due to covid and I do own my own business. Thank you for your time."

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the employment substantiation determination, dated April 5, 2021.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 8, 2023**



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  
(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.

RG/rh