

**Although the claimant selected Portuguese as her preferred language on her PUA application, a language listed under M.G.L. c.151A, § 62A, the claimant’s determination was issued in English, and she did not understand how to appeal. Board held the claimant had good cause to file her appeal beyond 60 days pursuant to 430 CMR 4.13(4).**

**Board of Review  
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**Issue ID: N6-HH3H-46KM**

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.

On June 4, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination (COVID-19 Eligibility), which concluded that the claimant did not meet the eligibility requirement under § 2102 of the CARES Act of 2020, commencing February 8, 2020. The claimant appealed that determination on September 13, 2021. The DUA then sent the claimant a Notice of Non-Monetary Issue Determination (Late Appeal) on September 27, 2021, informing her that she did not have justification for filing a late appeal. The claimant timely appealed the late appeal determination and attended the hearing. In a decision rendered on December 22, 2021, the review examiner affirmed the agency’s determination, concluding that the claimant did not have justification for failing to timely file an appeal of the June 4, 2021, COVID-19 Eligibility determination pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14–4.15. Thus, she 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 did not have justification for the late appeal of the June 4, 2021, COVID-19 Eligibility determination is supported by substantial and credible evidence and is free from error of law, where the claimant received the determination letter in English, and not in her preferred language of Portuguese.

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 initial PUA claim.
3. The claimant selected the Portuguese language preference on her PUA profile.
4. On June 4, 2021, the DUA issued the claimant a Notice of Non-Monetary Issue Determination (the Notice) related to her COVID-19 eligibility. The Notice was written in English and 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 4, 2021, when it was properly placed in her PUA account.
6. On June 25, 2021, the claimant viewed the Notice and did not [sic] file an appeal at that time.
7. The claimant did not file an appeal to the Notice because she did not know how to file an appeal and she did not want to make a mistake.
8. The claimant filed an appeal of the Notice on September 13, 2021, 101 days after the Notice was issued. The appeal was late.
9. On September 27, 2021, the DUA issued the claimant a Notice of Non-Monetary Issue Determination Late Appeal - No Justification.
10. 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. Upon 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 reject the review examiner’s legal conclusion that the claimant failed to establish justification to consider her appeal timely and is not entitled to a hearing on the merits of her COVID-19 Eligibility determination.

Because the claimant did not timely file an appeal of the COVID-19 Eligibility determination, we must look to the applicable statute and regulations to determine whether the claimant had good cause for being late.

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. . . .

The regulations provide several examples of what constitutes good cause.

The findings show the claimant filed her appeal 101 days after the COVID-19 Eligibility determination was issued, and that the determination was in English and not in her preferred language of Portuguese. *See* Findings of Fact ## 3, 4 and 8. Where English is not the primary language and determinations are not submitted in one's preferred language, the DUA regulations expanded the specified time frame for filing an appeal to sixty days or beyond.

430 CMR 4.13(4) provides:

(4) Notwithstanding 430 CMR 4.13(1) through (3), where the party is an individual whose preferred language is listed under M.G.L. c.151A, § 62A and who did not receive the Commissioner's determination in his or her preferred language, the request for hearing shall be deemed timely if filed within 60 calendar days from the date of mailing of the determination *or if filed after 60 day period* and the reason for the delay in filing is caused by the Commissioner's determination having not been in his/her preferred language.

(Emphasis added.)

In her decision, the review examiner failed to consider this regulation in its entirety, specifically the provision that applies to one who did not receive the Commissioner's determination in his or her preferred language and who files an appeal *after* the 60-day period. The review examiner found that the claimant filed her initial PUA application selecting Portuguese as her preferred language. *See* Finding of Fact # 3. The claimant filed her appeal 101 days after the DUA issued the COVID-19 determination which was not in Portuguese. *See* Findings of Fact ## 4 and 8. Portuguese is one of the languages listed under M.G.L. c.151A, § 62A.

The review examiner found that she did not understand how to appeal, which caused her delay in filing an appeal. *See* Finding of Fact # 7. We further note that the hearing was conducted with the assistance of a Portuguese interpreter, which underscores the claimant's need for Portuguese translation. Under these circumstances, we believe that the reason for the delay in filing the claimant's appeal was caused by the DUA's determination not having been in the claimant's preferred language of Portuguese.

We, therefore, conclude as a matter of law that the claimant's appeal is deemed timely pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.13(4).

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of the June 4, 2021, COVID-19 Eligibility determination.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 31, 2023**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

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](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.

DY/rh