

**Because the claimant did not receive the email notifying her of new correspondence in her PUA account inbox, she did not receive sufficient notice of the determination within the meaning of the Due Process Clause. As the claimant promptly filed an appeal upon learning about the determination, she established good cause for failing to file a timely appeal within the meaning of 430 CMR 4.15. She is entitled to a hearing on the merits of the underlying disqualifying determination.**

**Board of Review  
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Chairman  
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Member  
Michael J. Albano  
Member**

**Issue ID: N6-HH89-4228**

### 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 the claimant a hearing on the merits in connection with a determination 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 the DUA, effective March 15, 2020. On August 27, 2021, the DUA issued a Notice of Non-Monetary Issue Determination denying benefits based on Employment Substantiation (Employment Substantiation determination), which she appealed on October 1, 2021. On October 5, 2021, the DUA issued a Notice of Non-Monetary Issue Determination denying her appeal due to filing after the statutory deadline without justification (Late Appeal determination). She timely appealed this determination. Following a hearing on the Late Appeal determination, the review examiner affirmed the agency's initial determination in a decision rendered on January 11, 2022. The review examiner concluded that the claimant did not have good cause for failing to timely file an appeal of the Employment Substantiation 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 good cause to file her appeal more than 30 days after the date of the Employment Substantiation determination, is supported by substantial and credible evidence and is free from error of law, where the review examiner found that the claimant did not receive a notification in her email from the agency regarding this 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.
2. The claimant elected to receive electronic correspondence from the Department of Unemployment Assistance (DUA) on her PUA profile.
3. On August 27, 2021, the DUA issued the claimant a Notice of Non-Monetary Issue Determination Employment Substantiation (the Notice) in issue ID N6-H552-P3PK. 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. On August 27, 2021, the claimant received the Notice when it was properly placed on her PUA account inbox.
5. The claimant was checking her emails occasionally and the claimant expected her spouse to check her PUA account regularly.
6. The claimant did not receive a notification in her email about the Notice.
7. On September 30, 2021, the claimant received a notification in her email, which prompted the claimant's spouse to log into the PUA account.
8. The claimant read the Notice on the PUA website more than 30 days after its issuance.
9. The claimant filed the appeal immediately after reading the Notice.
10. No one discouraged the claimant from filing an appeal.
11. On October 1, 2021, 35 days after the Notice was issued, the claimant filed an appeal regarding the Notice in her PUA account.

### 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 disagree with the review examiner's legal conclusion that the claimant did not show good cause for her failure to file a timely appeal, as she found that the claimant did not receive a timely email notification to check her PUA account.

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

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 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. . . .

In this case, the claimant filed her appeal 35 days after the DUA issued its determination. Finding of Fact # 11. DUA regulations specify circumstances that constitute good cause for filing a late appeal within the meaning of G.L. c. 151A, § 39(b), and allow, under a few circumstances, a party to file an appeal beyond 30 days from the original determination. Specifically, 430 CMR 4.15 provides:

The 30 day limitation on filing a request for a hearing shall not apply where the party establishes that:

- (1) A Division employee directly discouraged the party from timely requesting a hearing and such discouragement results in the party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing;
- (2) The Commissioner's determination is received by the party beyond the 30 day extended filing period and the party promptly files a request for hearing;
- (3) The Commissioner's determination is not received and the party promptly files a request for a hearing after he or she knows that a determination was issued.
- (4) An employer threatened, intimidated or harassed the party or a witness for the party, which resulted in the party's failure to file for a timely hearing.

The review examiner concluded that the claimant was not entitled to a hearing on the merits of the August 27, 2021, determination because she was not checking her PUA account regularly. While we agree that claimants are obligated to make all reasonable efforts to monitor the status of their claim for benefits, a claimant's right to receive notice and an opportunity to be heard is a fundamental right.

The Due Process Clause of the Fourteenth Amendment prohibits the States from depriving any person of property without "notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (further citations omitted). Here, the claimant selected electronic correspondence as her communication preference but did not receive an email from the DUA informing her that the Notice had been placed in her PUA account inbox. Findings of Fact ## 2 and 6. Therefore, we believe that she did not receive the requisite notice necessary to file a timely appeal. *See* Board of Review Decision 0055 8011 26 (Mar. 29, 2021).

Additionally, we note that, when the claimant learned of the determination for the first time on September 30, 2021, she promptly filed her appeal. This demonstrates the type of due diligence expected under 430 CMR 4.15.

We, therefore, conclude as a matter of law that the claimant had good cause to file a late appeal pursuant to G.L. c. 151A, § 39(b) and 430 CMR 4.15.

The review examiner's decision is reversed. The claimant is entitled to a hearing on the merits of her Employment Substantiation determination.



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – August 11, 2023**



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.

JCT/rh