

**The DUA sent the claimant a notice on her PUA account after the PUA program had ended. As the claimant did not receive an email notifying her of new correspondence on her PUA account and filed an appeal immediately after speaking to a DUA representative, she had good cause for filing a late appeal under 430 CMR 4.15(3).**

**Board of Review  
100 Cambridge Street, Suite 400  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: N6-HHMK-32PR**

### 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.

On September 30, 2021, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, Employment Substantiation, which concluded that the claimant did not meet the eligibility requirements for continued PUA benefits commencing December 27, 2020 (employment substantiation determination). The claimant appealed the employment substantiation determination on November 8, 2021. The DUA then sent the claimant a Notice of Non-Monetary Issue Determination, Late Appeal, on November 23, 2021, informing her that she did not have justification for filing a late appeal (late appeal determination). The claimant timely appealed the late appeal determination and attended the hearing. In a decision rendered on February 15, 2022, the review examiner affirmed the agency's determination, concluding 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 of the employment substantiation determination.

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 for the late appeal of the employment substantiation determination, is supported by substantial and credible evidence and is free from error of law where the determination was issued after the PUA program had ended and the claimant did not receive an email alerting her to the determination that had been placed in her online PUA account.

### 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 September 30, 2021, the DUA issued the claimant a Notice of Non-Monetary Issue Determination Employment Substantiation (the Notice) in issue ID N6-H54H-96N7. 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 September 30, 2021, the claimant received the Notice when it was properly placed in her PUA account inbox.
5. The claimant did not get any notifications in her email inbox.
6. On an unknown date, the claimant logged into her PUA account to check on her claim and she saw the Notice.
7. The claimant contacted the PUA customer service, and she was advised to file an appeal to the Notice.
8. No one discouraged the claimant from filing an appeal.
9. On November 8, 2021, 39 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. 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 the 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 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 39 days after the DUA issued its determination. *See* Finding of Fact # 9. 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 express language of this regulation places the burden upon the claimant to show that one of these four circumstances applies. We need not consider (1) and (4), because the findings of fact do not suggest that those circumstances are at all applicable. Because 430 CMR 4.15(3) contemplates that the determination is never received, we also do not believe that this provision applies to the facts here. In this case, the question is whether, under circumstance (2), the claimant received the employment substantiation determination “beyond the 30 day extended filing period and [she] promptly [filed] a request for hearing.” As set forth below, we believe that the claimant’s circumstances fall under 430 CMR 4.15(2).

In this case, the claimant elected to receive communications from the DUA electronically. *See* Finding of Fact # 2. The DUA issued the employment substantiation determination to the claimant on September 30, 2021. *See* Finding of Fact # 3. At that time, the claimant was not checking her PUA account, as the PUA program was over.<sup>1</sup> FastUI, the DUA’s electronic record-keeping system, shows that the claimant read the employment substantiation determination on November 8, 2021. She then called the DUA and was advised to file an appeal. *See* Finding of Fact # 7. The claimant filed her appeal immediately after getting off the phone with the customer service representative.<sup>2</sup>

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<sup>1</sup> While not explicitly incorporated into the review examiner’s findings, this portion of the claimant’s testimony is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *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> This is also part of the claimant’s undisputed testimony on the record.

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). Since the claimant in this case did not receive an email from the DUA informing her that important documents had been delivered to her online PUA account, we believe that she did not receive the requisite notice necessary to file a timely appeal. See Board of Review Decision 0078 0045 79 (Oct. 27, 2022). As the claimant filed her appeal the same day that she read the employment substantiation notice, she filed promptly after receiving the notice.

We, therefore, conclude as a matter of law that the claimant established good cause for filing her appeal beyond the statutory appeal period 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 the underlying employment substantiation determination (Issue ID # N6-H54H-96N7).

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

REB/rh