

**The claimant mistakenly believed that he filed a timely appeal regarding a COVID-19 determination, when in fact, the claimant filed the appeal under the wrong Letter ID. Because the claimant tried to file a timely appeal, and, upon discovering the error, he immediately appealed, the Board declines to penalize him for his mistake. Held the claimant is entitled to a hearing on the merits of his COVID-19 eligibility disqualification.**

**Board of Review  
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**Issue ID: N6-HJH7-JK9M**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) concluding that the claimant lacked good cause for filing a late appeal. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On August 19, 2021, the DUA issued to the claimant a Notice of Non-Monetary Issue Determination regarding COVID-19 Eligibility (COVID-19 eligibility determination) informing the claimant that he did not meet the program eligibility requirements under the CARES Act. The claimant appealed the COVID-19 eligibility determination on February 18, 2022, more than thirty days after the notice was issued. On February 23, 2022, the DUA issued a Notice of Non-Monetary Issue Determination—Late Appeal (late appeal determination), stating that the claimant did not have good cause for submitting his appeal after the statutory deadline. The claimant appealed the late appeal determination. Following a hearing on the merits, the review examiner affirmed the agency's late appeal determination in a decision rendered March 24, 2022. We accepted the claimant's application for review.

The review examiner concluded that the claimant did not have justification for failing to timely file an appeal of the COVID-19 eligibility determination pursuant to G.L. c. 151A, § 39(b), and 430 CMR 4.14–4.15. Thus, he was not entitled to a hearing on the merits. 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 meet the criteria for failing to file a timely appeal of his underlying COVID-19 eligibility determination, because he mistakenly filed his appeal under the wrong letter ID, is supported by substantial and credible evidence and is free from error of law.

### 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) with an effective date of May 23, 2021. His weekly benefit amount is \$346.
2. The claimant chose to receive electronic correspondence from the Department of Unemployment Assistance (DUA) on his PUA profile. The claimant did not check his account regularly.
3. On August 19, 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.” This statement appears on the first page of the Notice directly below the Decision.
4. The claimant received the Notice on August 19, 2021, when it was properly placed in his PUA account.
5. The claimant’s aunt was helping the claimant manage his PUA account and had access to his email account. The claimant’s aunt saw the Notice in August 2021 and filed an appeal. The claimant and his aunt called PUA on February 18, 2022. During the call, the claimant was informed that the appeal had been filed on the wrong Letter ID. The claimant filed his appeal of the Notice on February 18, 2022, which is beyond the 30-day deadline. The appeal is late.
6. No one discouraged the claimant or his aunt from filing an appeal.

### 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 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 meet the criteria to file a late 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. . . .

During the hearing, the claimant testified that, after the determination was issued on August 19, 2021, the claimant read it and, with assistance from his aunt, appealed the determination in or around August, 2021. *See* Finding of Fact # 5. Unbeknownst to the claimant, he had filed under a separate determination associated with his claim. The claimant did not become aware of this mistake until he inquired about his claim through the PUA call center. On that same day, the claimant filed an appeal using the appropriate letter ID. However, the appeal was beyond the thirty-day deadline.<sup>1</sup>

In rendering Finding of Fact # 5, the review examiner accepted as credible the claimant's testimony that he did not take further action on the determination in August, because he believed that he had already filed an 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). Upon review of the record, we accept the review examiner's credibility assessment as reasonable in relation to the evidence presented.

The Board has declined to penalize a claimant for inadvertently filing an appeal of the incorrect determination where the record shows the claimant intended to file an appeal of the correct determination and promptly filed such an appeal upon learning of the mistake. *See, e.g.*, Board of Review Decision N6-H8V4-8KLD (May 19, 2022), and Board of Review Decision 0021 9945 62 (Aug. 21, 2017).

Here, the claimant believed that he indeed filed a timely appeal, only to learn later that the appeal was filed under the wrong Letter ID. Upon learning of his mistake, the claimant immediately appealed the COVID-19 Eligibility determination on February 18, 2022. *See* Finding of Fact # 5. Under these circumstances, we decline to penalize the claimant for this type of error. Inasmuch as the claimant's appeal of the incorrect letter ID was filed within 30 days, we deem his appeal of the correct issue to have been timely filed.

We, therefore, conclude as a matter of law that the claimant is deemed to have timely filed his request for a hearing 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 August 19, 2021.

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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).

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 21, 2024**



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.

TF/rh