

**The DUA delivered a notice to the claimant’s PUA account after the claimant had stopped requesting benefits because she had returned to work. She did not receive an email alerting her to new correspondence on her PUA account and, thus, did not check her PUA account until she received other notices related to her PUA claim through the mail. She promptly filed an appeal the same day she first read the notice. Under these circumstances, the claimant met the criteria for filing a late appeal under 430 CMR 4.14(2).**

**Board of Review  
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Chairman  
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**Issue ID: N6-HKNJ-LPK9**

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 February 24, 2022, the DUA sent the claimant a Notice of Eligibility Issue Determination, which stated that the claimant was not eligible for Massachusetts PUA benefits for the weeks ending July 4, 2020, through September 26, 2020, as DUA records showed that she had an active claim or was potentially qualified for regular unemployment benefits in another state (PCE<sup>1</sup> determination). The claimant appealed the PCE determination on October 21, 2022. The DUA then sent the claimant a Notice of Non-Monetary Issue Determination, Late Appeal, on October 31, 2022, informing her that she did not have a qualifying reason 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 January 13, 2023, the review examiner affirmed the agency’s determination that the claimant did not meet the criteria for failing to timely appeal the PCE 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 PCE 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 meet the criteria for filing the late appeal of the PCE determination, is supported by substantial and credible evidence and is free from error of law, where the claimant did not receive an email alerting her that the determination had been placed in her online PUA account.

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<sup>1</sup> Potential Claim Eligibility.

## 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 29, 2020.
2. The claimant elected to receive electronic correspondence from the Department of Unemployment Assistance ("DUA") on her initial PUA claim.
3. On February 24, 2022, the DUA issued the claimant a Notice of Non-Monetary Issue Determination ("the Notice") regarding an active or potential unemployment claim in another state. 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 or around February 24, 2022, when it was properly placed in her PUA account. The claimant was not aware of the Notice at that time, because she began working again and was no longer requesting unemployment benefits at the time.
5. The claimant became aware of the February 24, 2022, notice after receiving her Statement of Account and Tax Intercept notices in the mail, sometime in October 2022.
6. The claimant was never discouraged from filing an appeal by a DUA representative.
7. The claimant filed an appeal of the Notice on October 21, 2022, 239 days after the Notice was issued. The appeal was late.

## 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 PCE 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 239 days after the DUA issued its determination. *See* Finding of Fact # 7. 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 PCE 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 PCE determination to the claimant on February 24, 2022. *See* Finding of Fact # 3. At that time, the claimant was working and no longer requesting PUA benefits, so she was not checking her PUA account. *See* Finding of Fact # 4.

In the normal course, the DUA sends an email alert notifying a claimant to look in her PUA account for important correspondence. As acknowledged in the review examiner’s decision, the claimant asserted that she never received an email alert that the PCE determination had been delivered to her online PUA account. She testified that she confirmed this by searching her email account after

she learned about the notice.<sup>2</sup> The review examiner does not discredit her testimony. She merely dismissed it as irrelevant. We disagree.

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).

The claimant did not become aware of the PCE determination until October, 2022, after she received other notices related to her PUA claim through the mail. *See* Finding of Fact # 5. We note that FastUI, the DUA’s electronic record-keeping system, shows that the claimant read the PCE determination on October 21, 2022. She promptly appealed the determination on the same day. *See* Finding of Fact # 7.

We, therefore, conclude as a matter of law that the claimant established that she met the criteria for filing her appeal beyond the statutory appeal period pursuant to 430 CMR 4.15(2).

The review examiner’s decision is reversed. The claimant is entitled to a hearing on the merits of the underlying PCE determination in Issue ID # N6-HHJP-254T.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 12, 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)**

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<sup>2</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).

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