



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
BOARD OF REVIEW

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## BOARD OF REVIEW DECISION

BR-112257 (Mar. 11, 2011) - A claimant had good cause to return his hearing request 9 days late under G.L. c. 151A, sec. 39(b) and 430 CMR 4.14(6). The claimant promptly mailed it into DUA within the same window of time that he would have had if DUA had sent the determination to the claimant's correct address.

### Introduction and Procedural History of this Appeal

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

The claimant filed a claim for unemployment benefits which was denied by the DUA in a determination, dated July 16, 2009. The claimant appealed on August 4, 2009. The DUA denied the claimant's appeal as untimely under G.L. c. 151A, § 39(b), on August 6, 2009.

The claimant appealed the timeliness determination to the DUA hearings department. A hearing was held before a review examiner. In a decision rendered on November 24, 2009, the review examiner concluded that the claimant failed to establish good cause for his late appeal. We accepted the claimant's application for review.

Our decision is based on our review of the entire record including the recorded testimony and evidence from the DUA hearing, the decision below, and the claimant's appeal.

The issue on appeal is whether the claimant's request for a hearing was "prompt" within the meaning of 430 CMR 4.14(6), when he mailed it eight days after receipt of a determination that was sent to the wrong address.

Findings of Fact

The review examiner's findings of fact and credibility assessments are set forth below in their entirety:

1. On July 16, 2009, a "Notice of Determination on Application for Waiver of Recovery of Overpaid Benefits" ("the Notice") was mailed to the claimant's previous address by the Division of Unemployment Assistance ("DUA"). A request for hearing was due to be returned no later than July 26, 2009.
2. The claimant provided the DUA with his new address prior to the Notice being sent to him. The reason the Notice was sent to his previous address is unknown.
3. Due to this mistake, the claimant did not receive the Notice until the post office forwarded it to his new address. The claimant did not receive the Notice until July 27, 2009, which was after the due date for a request for hearing.
4. Upon receiving the Notice, the claimant read the Notice. The same day the claimant called the DUA. The DUA told the claimant that he could still take action and request an appeal.
5. The claimant's request for hearing was received by the DUA postmarked August 4, 2009, (19 days after the Notice was mailed).
6. On August 6, 2009, a "Determination as to Timeliness of Appeal" was issued determining the reason for not filing within 10 days did not constitute good cause.

Ruling of the Board

The Board adopts the review examiner's findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

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. . . .(Emphasis added.)

The relevant DUA regulation, 430 C.M.R. 4.14, provides in relevant part, as follows:

The Commissioner may extend the ten day filing period where a party establishes to the satisfaction of the Commissioner or authorized representative that circumstances beyond his or her control prevented the filing of a request for a hearing within the prescribed ten day filing period. Examples of good cause for a failure to file a timely request for a hearing include, but are not limited to, the following: . . . (6) The Commissioner's determination is not received and the party *promptly* files a request for a hearing after he or she knows or should have known that a determination was issued; . . .(Emphasis added.)

The findings reveal that the claimant submitted his request for a hearing nineteen days after the Notice of Determination was mailed by the DUA. G.L. c. 151A, § 39(b), allows for submission within thirty days after the determination was mailed, if the party had good cause. As set forth under 430 CMR 4.14(6), failure to receive the determination may constitute good cause, if the party *promptly* files the request for hearing. We must decide whether the claimant's hearing request was filed "promptly" as a matter of law.

Had DUA originally mailed the July 16, 2009, determination to the claimant's correct address, the post office would have delivered it to him within two to five days. In order to meet the ten-day filing deadline under G.L. c. 151A, § 39(b), he would have had a five- to eight-day window from when he received it to mail the hearing request back to DUA. According to the findings, the determination was actually delivered to him on July 27, 2009, and he mailed it back on August 4, 2009, eight days later. He returned the hearing request within the same window of time as he would have had if the determination had not been improperly addressed by the agency. It would be unfair to interpret "promptly" as affording him less time.

We conclude as a matter of law that the claimant's request for a hearing was submitted promptly within the meaning of 430 CMR 4.14(6). Therefore, the claimant has met the requirements for a hearing under 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 determination, dated July 16, 2009.

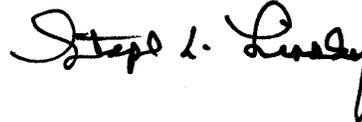


John A. King, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF MAILING - March 11, 2011**



Sandor J. Zapolin  
Member



Stephen M. Linsky, Esq.  
Member

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT**  
**(See Section 42, Chapter 151A, General Laws Enclosed)**

**LAST DAY TO FILE AN APPEAL IN COURT – April 11, 2011**