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1600 GENERAL DETERMINATIONS

1601 FILING AND REGISTRATION REQUIREMENTS

1610 STATUTE

§25(a)

"No waiting period shall be allowed and no benefits shall be paid to an individual pursuant to this chapter for ... (a) Any week in which he fails without good cause to comply with the registration and filing requirements of the Commissioner."

[See also: 430 CMR 4.01 - 4.04]

1611 PRINCIPLES

Section 25(a) stipulates that, in order to receive credit for a waiting period served or weekly benefit payment, the claimant must comply with the filing and registration requirements of the Commissioner. These requirements pertain most prominently to the filing of initial and continued claims but also encompass the obligations of the claimant to comply with requests for information (e.g., identification requirements, worksearch reviews) and to participate, when requested to do so, in other activities deemed necessary to achieve re-employment (Career Center Seminars, Re-Employment Assistance worksearch reviews, etc.).

1612 CONTINUED CLAIMS

With respect to continued claims, the regulations referenced above pertain to individuals filing continued claims by mail or in person and indicate that claims for benefit payment will be submitted using a certification form and that claims must be submitted by mail or in person in a timely manner.

When returned by mail, the benefit certification form must be postmarked no earlier than Saturday of the last week of the reporting period (typically two weeks) for which benefits are claimed and no later than 21 days after that Saturday. When reissued, a benefit certification form must be returned postmarked no later than the third Friday following the week during which the form was reissued to the claimant.

When returned by hand to a location designated for the submission of benefit certification forms, the form may be returned no earlier than the first business day following the Saturday of the last week of the reporting period for which benefits are claimed and no later than the third Friday following that Saturday. When reissued, a benefit certification form must be returned no later than the third Friday following the week during which the form was reissued to the claimant.

In determining the timeliness of a returned benefit certification form:

- The benefit certification form will be considered filed on the date indicated by the postmark when submitted by mail, or the office date stamp when submitted by hand.
- When the postmark or date stamp is missing or illegible the benefit certification form may be considered to have been filed in a timely manner.
- Reissuance of a benefit certification form will begin a new filing period.

(A) Non-Return or Late Return of Certification Form

The claimant has twenty-one days to return a benefit certification form in a timely manner. If the certification form is returned by mail and postmarked after the twenty-one day filing period has lapsed, a filing and registration issue record is generated during the scanning process. The claimant is notified, via a message printed on the subsequent benefit certification form, to contact the claims office to provide further information relative to eligibility for benefits. No payment will be issued pending adjudication of the issue.

The issue will be applicable to the week or weeks for which benefits were claimed on the benefit certification form which was not submitted in a timely manner. After processing at the Central Mail Unit, the original form will be forwarded to the claims office so that the original document can be included in the adjustment file.

Proceed as follows when adjudicating the issue:

Prepare a Claimant's Statement of Facts, Form 113, detailing the reason(s) for late filing. Consideration of good cause is limited to a compelling personal reason that prevented the claimant from submitting the benefit certification form in a timely manner. Examples include, but are not limited to:

- Claimant illness
- Illness of a household or family member who requires care by the claimant
- Death of a household member or immediate family member
- Jury duty

A return to full employment or absence from the area during the filing period are not sufficient reasons for failure to submit the benefit certification form in a timely manner.

In addition, the claimant's reason for failing to submit the certification form in a timely manner may become your basis for disqualifying the claimant pursuant to another section of the law [e.g., §24(b), Able and Available].

If the claimant did not have good cause for the late filing, a disqualification notice will be issued citing §25(a). Use the following explanation on the Notice to Claimant of Disqualification:

Form 3720 Explanation:

Without good cause, you failed to return your Claim Certification Form in a timely manner. Therefore, you are disqualified for the week(s) in question pursuant to the above-cited section of the Law.

(B) Failure to Answer Call-In

If a claimant fails to respond to a call-in card, letter or other message about a job opening, and has no good cause for such failure, disqualify the claimant pursuant to §25(a) for failure to comply with the filing and registration requirements. The disqualification is for the week in which the claimant failed to answer the call-in.

Form 3720 Explanation:

Without good cause, you failed to answer a call-in card requesting you to contact your employment office about a job opening. Therefore, you are disqualified pursuant to the above-cited section of the Law.

1613 INITIAL CLAIMS

(A) Claimant Identification

In some cases, (e.g., duplicate claims, data discrepancy, etc.) it may be necessary to verify the claimant's identity and Social Security number by requiring the submission of verifying documentation. Form 1894-T, Verification of Social Security Number, is used for this purpose. This form notifies the claimant that the requested verifying documentation must be submitted within twenty-one days. It further advises the claimant that failure to present the required documentation will result in a determination denying benefits. Subsequent issuance of Form 3743 or Form 3733 after the expiration of the 21 days is not required.

If the form is not returned by the claimant and the case is referred for adjudication of the issue, note on Form 113 that Form 1894-T was issued to the claimant and either was not returned or was returned with insufficient documentation. Any discrepancies involving the request for identification must be resolved. If a claimant has been referred to adjudication for failure to provide satisfactory identification, prepare a Claimant's Statement of Facts, Form 113, which addresses the following:

- Was the claimant informed of the identification requirement?
- Did he or she receive a Form 1894, "Notice to Unemployment Insurance Claimants: Identification Requirements?"
- What identification did the claimant submit?
- Why didn't the claimant present proper identification?
- What action(s) did the claimant take to obtain required identification?

If it is determined that the claimant has not submitted appropriate identifying documentation, a disqualification will be issued citing §25(a). Disqualification will be for the effective week of the claim and indefinitely until such time as verifying documentation is submitted.

Inform the claimant that eligibility may be redetermined if/when proper identification is submitted. The claimant must also be informed of his or her right to appeal the determination.

If the claimant files an appeal and/or expects to obtain and submit proper identification, instruct the claimant to continue to file bi-weekly claims for benefits by continuing to submit benefit certification forms. Note on Form 113 that these instructions were provided to the claimant.

A Form 3720 (or 3727-B) should be issued to the claimant. Since the claimant has failed to meet the filing and registration requirements, the disqualification is to be issued pursuant to §25(a) of the Law. The following explanation is to be used on Form 3720 (Form 3727-B, if the claimant has received benefits prior to submission of proper identification):

Form 3720 Explanation:

Because you have failed without good cause to present proper identification, you do not meet the filing and registration requirements of the above-cited section of the Law.

You may redetermine this disqualification without the approval of the Determinations Department if the claimant submits the required documentation after issuance of the disqualification. This is the only issue that may be redetermined by a claim adjudicator. The authority for all other redeterminations rests solely with the Determinations Department.

1614 WORKSEARCH ACTIVITY REVIEWS

Failure To Report for Worksearch Activity Review

Unemployment Insurance recipients may be scheduled for a review of their worksearch activities. These reviews may be scheduled as part of a worksearch monitoring program, the Re-Employment Assistance (REA) program or to meet other program requirements.

When a worksearch activity review is conducted, the claimant will typically be notified by mail of the date by which a record of worksearch activities must be submitted. If a claimant fails to submit a log of worksearch activities by the date requested (or fails to contact the claims office or Career Center to reschedule the review) an issue record using issue code 54, *Failure to Respond to a Request for Worksearch Activity Log*, should be created.

The claimant should be contacted and the claim adjudicator must investigate and document the claimant's statement as to the reason(s) for the failure to comply with the request. The statement must include the date by which the claimant was scheduled to submit the requested documentation of worksearch activities, an acknowledgement or denial that this notification was received, and the reason(s) that the claimant failed to comply with the request. When the claimant has failed to report for a worksearch activity review as part of the Re-Employment Assistance program, a copy of the notification sent to the claimant by the Career Center will be forwarded to the appropriate adjudication unit for inclusion in the case file.

If the claimant's reason(s) for not responding constitutes good cause, prepare a reasoning statement which must be included in the adjudication documentation. Good cause may include the following:

- Attendance at a job interview.
- Claimant, household member or immediate family member illness.
- An emergency family care issue, provided, that attempts to secure family care for the scheduled activity have been made.
- Death of a household member or immediate family member.
- Previously scheduled health-related appointments.
- Unexpected transportation problems.
- Jury duty.
- A return to work date within the week that the claimant was to have submitted documentation of worksearch activities or during the following week.
- Other circumstances which the commissioner determines are beyond the individual's control.

Claim adjudicators should be alert to circumstances which might raise an eligibility issue, particularly pursuant to §24(b).

If the claimant's reason(s) for not complying with the request does not constitute good cause, you must issue a disqualification citing §25(a) for the *one* week during which the failure occurred. Use the following explanation on the determination:

Form 3720 Explanation:

Without good cause you failed to (*submit a record of your worksearch activities*) or (*report for an Eligibility Review Interview*) as requested. Therefore, you are disqualified for benefits pursuant to the above-cited section of the Law.

1615 RE-EMPLOYMENT SERVICES/CAREER CENTER SEMINAR

Failure to Report for Career Center Seminar

When a profiled claimant fails to attend a Career Center Seminar (CCS), a filing and registration issue will be created and the claimant referred for adjudication. An issue record, using issue code 55, will be created if the claimant fails to attend the CCS.

In addition to §25(a), Regulation 4.01: (8) is also applicable and reads, in part, as follows:

(a) "Any individual who has been identified under a profiling system established by the commissioner as likely to exhaust regular benefits and in need of job search assistance services to make a successful transition to new employment shall not be eligible for benefits for any week such individual fails without good cause to attend and participate in a re-employment services seminar or such follow-up review sessions as directed by the Commissioner."

When a claimant is referred to you because of a failure to attend a CCS, prepare a Claimant's Statement of Facts, Form 113, and document the actual activity the claimant was scheduled to attend, the date the claimant was scheduled to attend, the claimant's understanding of his or her responsibility to attend, and the reason or reasons given by the claimant for his or her failure to attend.

If it is determined that a claimant had good cause for failing to attend the CCS, a reasoning statement is to be written on Form 113 and the issue approved. The resolution of an issue constitutes valid workload credit as long as the case material is properly documented and the file contains a reasoning statement.

Good causes for failing to attend the CCS are specified by Regulation 4.01: (8) (b) as follows:

- Attendance at a job interview;
- Claimant, household member or immediate family member illness;
- Emergency family care issue, provided, that attempts to secure family care for the scheduled activity have been made;
- Unexpected transportation problems;
- Previously scheduled health-related appointments;
- Jury duty;
- Death of a household member or immediate family member (including a spouse, child, parent, brother, sister, grandparent, stepchild or parent of a spouse);
- Other circumstances which the Commissioner determines are beyond the individual's control.

If the Career Center Seminar is offered only in English and the claimant is an individual with limited English-language proficiency, this constitutes good cause for failure to attend.

If, however, a claimant cannot establish a good cause for his or her failure to attend a CCS, the claimant will be disqualified for the week in which the activity was scheduled. The disqualification will be issued citing §25(a) and the following explanation is to be used on Form 3720:

Form 3720 Explanation:

You failed, without good cause, to attend a required (Career Center Seminar) when scheduled. Therefore, you are subject to disqualification pursuant to the above-cited section of the Law.

1616 COURTESY CLAIMS

(A) Multiple Courtesy Claims Filed in the United States, Its Territories, or Canada

A claimant is allowed to file only one courtesy claim while out of the area for the sole purpose of seeking work. If the claimant is filing for benefits every two weeks, this would be for a two week period. Thereafter, if the claimant wishes to continue to claim benefits, the claim must be transferred and further benefits claimed on an interstate basis. The claimant must be advised accordingly.

Failure to transfer the claim will result in the denial of benefits. If further benefits are claimed, disqualify the claimant citing §25(a) and using the following explanation on Form 3720:

Form 3720 Explanation:

Without good cause, you failed to continue your claim by filing on an interstate basis from the state (province) in which you are located after being advised to do so. Therefore you are disqualified for benefits for the week(s) in question pursuant to the above-cited section of the Law.

(B) Multiple Courtesy Claims Filed Outside of the United States, Its Territories, or Canada

A claimant is allowed to file only one benefit certification while outside of the United States, its territories or possessions, or Canada. The reason for this limitation is that Massachusetts has no reciprocal agreements on the payment of benefits with any foreign country except Canada.

A claimant would be entitled to benefits for the period covered by the one benefit certification form only if he or she meets the availability requirements of §24(b). If the claimant signs for additional benefits while out of the country, the claimant must be disqualified citing §25(a). Use the following explanation on Form 3720:

Form 3720 Explanation:

You failed without good cause to meet the filing and registration requirements to continue your claim since you are in a foreign country. As the State of Massachusetts has no reciprocal agreement with this Country, with respect to unemployment insurance claims, you are subject to disqualification pursuant to the above-cited section of the Law for week(s) in issue.

1620 PREDATING OF CLAIMS (NEW AND REOPENED)**1621 STATUTES****§23(b)**

"Benefits shall be paid to an eligible individual for no more than his weeks of unemployment subsequent to a waiting period, the duration of which shall be determined as follows:...(b) With respect to an individual in total unemployment who has registered or given notice as required by this section the waiting period shall commence on the Sunday immediately preceding the date of registration. With respect to an individual in partial unemployment, such waiting period shall commence on the Sunday next but one preceding such registration or notice; provided, that in the case of an individual in partial unemployment, the commissioner may prescribe an earlier Sunday on which such waiting period shall commence. "

§62A(f), (g)

"(f) A claimant shall be deemed to have initiated a claim for unemployment compensation benefits on the first day that the claimant contacts or attempts to contact the division, whether or not such employee is able to speak with a division representative at the time.

(g) Each employer shall post at each site operated by the employer, in a conspicuous place, accessible to employees, the following information: the name and mailing address of the employer, the identification number assigned to the employer by said division, instructions on how to file a claim for unemployment compensation, the address and telephone number of the regional office of said division located nearest the work site, and the telephone number of the teleclaim information line. Each failure to post the information described herein shall result in a written warning by said division to the employer for a first violation, and thereafter shall result in the assessment of a civil fine of \$100 for a second violation, \$250 for a third violation and \$500 for a fourth and subsequent violations. Said division shall collect all fines assessed for violations of this subsection for deposit into the General Fund.

Each employer shall issue to every separated employee, as soon as practicable, but not to exceed 30 days from the last day said employee performed compensable work, written information furnished or approved by said division, which shall contain the name and mailing address of the employer, the identification number assigned to the employer by said division, instructions on how to file a claim for unemployment compensation, the address and telephone number of the regional office which serves the recipient, and the telephone number of the teleclaim information line. Delivery is made when an employer provides such information to an employee in person or by mail to the employee's last known address.

The waiting period pursuant to §23 for an employee who did not receive the information required by this paragraph and who failed to file timely for benefits, shall be Sunday of the initial week such employee would have been eligible to receive unemployment compensation. Each employer shall have the burden of demonstrating compliance with the provisions required herein."

[See also: 430 CMR 4.01(3) and 4.01(4)]

1622 PRINCIPLES

Under §23(b) of the Law, a claimant's waiting period for benefits begins on the Sunday immediately preceding the registration or notice date. In some cases a claimant may request that the effective date of his or her claim be predated to an earlier Sunday.

Such requests shall be granted in the following circumstances:

- The claimant was in partial unemployment during the week prior to filing the claim. This is an administrative predate that does not require referral for adjudication.
- The claimant establishes good cause for failing to file earlier.
- The claimant establishes previous unsuccessful attempts to contact the DUA to file a claim.
- The claimant did not receive written information from his or her employer on filing a claim for Unemployment Insurance.

(A) Claimant in Partial Unemployment During the Week Prior to Filing

A claimant who is in partial unemployment in the week prior to filing his or her claim will have the claim predated automatically (administrative pre-date).

When adjudicating a predate request, claimants who have performed no work but received a payment (e.g., holiday, vacation, severance pay, etc.) should be considered to be in total unemployment and ineligible for an administrative predate.

(B) Good Cause

You may predate a new or reopened claim for partial or total unemployment to one of the Sundays within the preceding four weeks if you establish that the claimant had good cause for failure to report earlier. (Requests for predating beyond four weeks are subject to the approval of the Determinations Department.)

Good cause reasons for a predate issue include:

- The claimant could not file because of illness, death in the family, or other compelling personal reasons.
- The claimant's employer provided incorrect information about filing requirements.
- A DUA employee instructed the claimant not to file earlier.
- The claimant found new full-time employment (If requesting a predate to weeks of partial employment).
- The claimant did not know how to file a claim, took prudent action to find out how to file, but was nevertheless delayed in filing the claim.
- The claimant made previous unsuccessful attempts to contact the agency by telephone to file a claim but was unable to contact a staff member due to heavy call volume.

(C) Previous Unsuccessful Attempts

An automatic predate of up to two weeks will be granted when a claimant indicates that he or she was in total or partial unemployment and made one or more attempts during a prior week (or two), but was unsuccessful in reaching the DUA to file his or her claim. These cases need not be referred for adjudication of a predate request.

A claimant requesting a predate of more than two weeks (regardless of whether the weeks were of partial or total unemployment) because he or she contacted or attempted to contact the DUA to file a claim, but was unsuccessful in doing so, must be referred to adjustment. Document the facts relative to the claimant's previous attempts to contact DUA in a Claimant's Statement of Facts. The dates, or period of time during which the claimant attempted to contact the DUA will be recorded in the statement.

A request for a predate of more than 4 weeks because a claimant was unsuccessful in reaching DUA must be sent to the Determinations Department. Document the facts relative to the claimant's unsuccessful attempt(s) to contact the DUA in the Claimant's Statement of Facts prior to submitting the request to the Determinations Department.

(D) Claimant Not Aware of Right to File

If the claimant's statement indicates that he or she did not know about filing a claim, that his or her employer had never informed the claimant about filing for unemployment, note the claimant's last day of work and proceed as follows:

If the date of the claimant's statement is less than 30 days since the claimant's last day of work then the employer still has time to comply with the legal requirements of §62A(g) and may do so. The DUA will grant the claimant's request for a predate if the claimant establishes that he or she was unaware of how and where to file a claim. Complete a Claimant's Statement of Facts, Form 113 [or 113(b)], addressing the following:

- Has the claimant ever filed a claim before?
- Did the claimant receive written information incorporating the employer's name and address, and addresses and phone numbers of DUA offices either in person at the time of separation or later by mail?
- Did the claimant ever see posted information about unemployment in the workplace?
- Did the claimant take prudent action to determine how to file a claim (e.g., by attempting to identify the appropriate agency with which claims are filed, by attempting to contact DUA to determine how to file.

It will be necessary to obtain a statement from the claimant's separating employer in those cases in which the claimant maintains that he or she did not receive or does not remember receiving written information on filing for unemployment benefits.

The following points should be covered in the employer's statement:

- Is the employer aware of the requirement that information on filing for benefits must be provided to separated employees?
- Was the information provided to the claimant?
- Is there any documentation that would help to establish that the information was issued to the claimant?

If the employer maintains that the required information was issued to the claimant at the time of separation or subsequently and the statement is credible contact the claimant for a rebuttal prior to making a determination on the request for predate.

If you determine that the employer did provide the required information to the claimant, the request for predate will be denied. If the claimant establishes to your satisfaction that the information was not provided *and* the reason for not filing was ignorance of the process (no record of previous claims, no poster in the former workplace, no Form 590-A issued by the employer), the request for predate will be granted [even though the employer still has time to comply with the requirements of §62A(g)].

If the date of the claimant's statement is more than 30 days after the claimant's last day of work the only fact that must be established is whether or not the employer provided the required written information about how to file for unemployment benefits to the claimant. A record of past claims filed by the claimant is irrelevant. Obtain a statement of facts from the claimant and employer as indicated above. The claimant's request for predate will be granted if it is established that the employer did not provide the required written information.

Under §62A(g) the waiting period for an individual who did not receive the required information will be Sunday of the initial week that the individual would have been eligible to file a claim.

1623 PROCEDURE

If the request is granted, complete the necessary data entry to correct the effective date of the claim.

If a predate is denied on a new claim, issue Form 323 [Notice to Claimant of Denial of Predate], citing §23(b) and 430 CMR 4.01 (3), and §24(c) and 430 CMR 4.01 (4) for reopened claims.

1625 WITHDRAWAL OF A CLAIM

1626 STATUTES

§23(a)

"An individual who is in total or partial unemployment and who registers at an unemployment office or other place of registration maintained by the Commissioner or has otherwise given notice of his unemployment in accordance with the procedure prescribed by the Commissioner shall be eligible for benefits for unemployment subsequent to a waiting period sustained with respect to the benefit year to which the claim applies, which benefit year includes the week for which he claims payment for benefits. Said waiting period shall consist of one week of total or partial unemployment. No benefits shall be paid or become payable during said waiting period; thereafter benefits shall be payable weekly and shall be paid weekly; provided, however, that whenever, in the discretion of the Commissioner, the public interest would be benefited thereby, benefits may be paid on a bi-weekly basis."

§1 (c)

"*Benefit year*, the period of fifty-two consecutive weeks beginning on the Sunday immediately preceding the date on which an individual files a claim for benefits; provided, however, that the benefit year shall be fifty-three weeks if filing a new claim would result in overlapping any quarter of the base period of a previously filed new claim where such extension of the benefit year will prevent such overlapping; provided, further that, with respect to the week in which such claim is filed, (1) the individual has no unexpired benefit year and (2) the individual meets the requirement of subsection (a) of §24; provided, further, that if the individual has been denied benefits during the period the individual is receiving termination, severance, or dismissal pay, or payment in lieu of dismissal notice pursuant to the provisions of clause (3) of subsection (r), the individual's benefit year shall be extended by the number of weeks for which the individual was disqualified but no more than fifty-two weeks."

1627 PRINCIPLES

Claimants occasionally request withdrawal of a claim previously filed. However, the DUA has no statutory authority to grant such requests. Section 23(a) of Chapter 151A clearly states that a claimant who notifies DUA of his or her unemployment establishes a claim on which benefits are payable during a benefit year. Section 1(c) also defines a benefit year. Therefore, a claim cannot be withdrawn once the claimstaking interview and data entry has been completed. However, if the claimant informs the claimstaker, during the interview process, that he or she does not wish to file a claim, the interview will be concluded and no claim will be processed.

The denial of a request to withdraw a claim is a determination. Therefore, you must take a statement from the claimant that identifies the filing date of the current claim and the reason for the request for withdrawal and issue the claimant a written determination.

1628 CIRCUMSTANCES AND POLICIES

After filing an initial claim for benefits, a claimant asks to withdraw the claim. One or more reasons may be indicated by the claimant as reason for requesting the withdrawal, for example:

- The claimant has discovered that a delay in filing might increase benefit entitlement due to an increase in the maximum benefit rate, or a change in the quarters comprising the base period.
- The claimant has returned to work.
- The claimant has decided not to pursue a claim for benefits.

Because the claim has been established, you should issue a disqualification using the following explanation:

Form 3720 Explanation:

The claim which you filed on (date of filing) established a valid claim for unemployment benefits which will remain in effect until the expiration of the benefit year applicable to that claim.

Because §23(a) and § 1(c) are not printed on the reverse side of Form 3720, you will need to attach a copy of these sections to the form.

1630 CLAIMS NOTICES: TIMELINESS, COMPLETENESS, LETTER RESPONSE

1631 STATUTE

§38

"(a) Benefit claims shall be filed at the employment office at which the claimant has registered as unemployed. The Commissioner shall prescribe the form, the time, and the manner in which such claims, other than disputed claims, shall be filed. The Commissioner shall also prescribe the form and manner in which reports on claims required from the claimant and from the employing units shall be presented, and the conduct of hearings, other than those on appeals. Such procedure shall be designed to ascertain the substantive rights of the parties involved, without regard to common law or statutory rules of evidence and other technical rules of procedure.

For the purposes of this section, the Commissioner shall notify so many of the claimant's base period employers to report wages paid such individual during the base period as he finds necessary to make a proper determination on said claim. Each such employer shall thereupon promptly report to the Commissioner, in such form and manner as the Commissioner prescribes, such information as may be necessary to determine a claimant's benefit rights pursuant to this chapter. If an employer fails to respond to the Commissioner's notice pursuant to this section within ten days after such notice was mailed to him, the Commissioner shall promptly determine the matter based on the available information. If an employer fails to respond to the Commissioner's notice pursuant to this subsection without good cause, the employer shall have no standing to contest such determination, and any benefits paid under such determination shall remain charged to the employer's account; provided, that the Commissioner shall impose a penalty of twenty-five dollars against the employer for each such failure without good cause. For the purpose of processing claims pursuant to this section, and for the purpose of subsection (b) of §44, the Commissioner shall not require any wage reports other than those provided for by this section.

The Commissioner may promulgate rules and regulations allowing an employer to report wages on "wages paid" or "wages earned" basis.

(b) Notice of a claim so filed shall be given promptly by the Commissioner or his authorized representative to the most recent employing unit of the claimant and to such other employing units as the Commissioner may prescribe. If such employing unit has reason to believe there has been misrepresentation or has other reasons which might affect the allowance of said claim, or has been requested by the Commissioner to furnish any other pertinent information relating to said claim, it or he shall return the said notice to the indicated employment office with the reasons or information stated thereon within eight days after receipt, but in no case more than ten days after mailing of said notice, in accordance with the procedure prescribed by the Commissioner.

Failure without good cause to return said notice and information within the time provided in this section or prescribed by the Commissioner shall bar the employing unit from being a party to further proceedings relating to the allowance of the claim, and failure knowingly to return it within such time shall subject the employing unit to the penalties provided in §47. For the purposes of this subsection, it shall be deemed that said notice has been returned as of the date indicated by the postal cancellation stamp thereon."

1632 PRINCIPLES**(A) Timeliness**

In order to ensure that UI benefits are paid promptly and accurately, the law requires employers to respond to a request for wage and separation information in a timely manner. In most cases, employers complete a mailed request for separation and wage information to properly establish a claim. Alternatively, employers may provide information online. However, employers sometimes fail to respond in a timely manner or submit an incomplete response. If the employer fails to respond within the time specified by law and without good cause, the employer may be subject to a monetary penalty and loses the right to protest benefit charges and/or appeal a determination.

In accordance with §38(a) and (b), a claimant's employer has ten days from the date of mailing to respond to a request for wage and/or separation information. The ten days include Saturdays, Sundays, and legal holidays unless the tenth day (the due date) falls on one of those days, in which case the form is due not later than the next business day. The employer bears the burden of proof in establishing good cause for failure to return a request for wage and/or separation information in a timely manner.

The law associates different penalties with the failure to provide timely wage information on the one hand, and timely separation information on the other. When wage information is requested, the returned request is considered incomplete if any wage information, including lag wages, is not provided. An employer loses the right to potential benefit charge relief when wage information is not provided, is not provided in a timely manner without good cause, or is incomplete. When separation information is not provided, or is not provided in a timely manner without good cause, the employer is barred from being a party to further proceedings relative to the claim for benefits. This entails loss of the right to receive a copy of the determination, appeal the determination, or cross examine witnesses at any subsequent hearing.

(B) Letter In Lieu of Form 1062/1074

There may also be instances when the employer responds with a letter rather than the Form 1062/1074 that was issued by the DUA. The form may have been lost, damaged or the employer may allege that the request was never received. A letter of response is acceptable. The employer's rights to protest subsequent benefit charges or retain rights as a party to the claim must be determined based on the timely return of the letter and whether the letter constituted a thorough response as required by law. All requested wage information must be provided to retain charge protest rights and separation information must be included in the letter in order to preserve the employer's standing as a party to the claim.

Employers/agents may *routinely* submit requested wage and separation information using a letter in lieu of Forms 1062/1074 only after securing prior approval from the DUA. The format of letters to be used for this purpose must be approved by the DUA in advance to insure that all required information is provided and formatted in a manner which will facilitate processing of the requested information.

An employer or agent who contacts the DUA regarding the use of an alternative to Forms 1062/1074 must be referred to UI Operations so that the format requirements can be explained and the form of response agreed upon in advance. Call center staff will be notified in writing when an employer or agent is authorized to respond using an approved letter format. These responses will be treated as though received on Form 1062/1074.

In most cases, Forms 1062/1074 must be issued to the employer in accordance with standard procedures when a claim is filed. Alternatively, employers may elect to receive and complete requests electronically.

(C) Good Cause Reasons for Late Return

Good cause reasons for late return will include:

- Incorrect address.
- Incorrect(or no)ZIP code.
- Incorrect Social Security number or incorrect claimant name.
- The form was delivered by the Post Office on or after the expiration date for a timely return (e g., during holiday season).
- The wage request form was mailed to a shut down location of a seasonal business and the employer had notified DUA of the proper off-season address.
- The wage request form was mailed to a successor employer who has no records and who forwarded the form to the predecessor employer.
- The records are in escrow due to bankruptcy proceedings or an assignment for the benefit of creditors.
- Misinformation was provided to the employer by a DUA employee.

Good cause reasons do not include:

- A temporary company shutdown for reasons such as vacation or inventory.
- A labor dispute.

The Commissioner may grant an employer an extension to respond to requests for wage and separation information. In such cases, staff will be notified of any extension.

(D) Unforeseeable Circumstances: Additional Good Cause Reasons for Late Return

There is some leeway to extend good cause to include other circumstances that, to a reasonable person, present an acceptable explanation for the conduct in question. These other "circumstances" would include those involving unforeseeable events if the employer's actions were reasonable under those particular circumstances.

A determination of good cause must be based on all of the relevant facts surrounding the stated reason for a late response to the request for wage and separation information.

The types of circumstances which may present a good cause for late filing include:

- Circumstances over which the employer had no control, (e.g., fire, theft, or natural disaster).
- Unforeseeable personnel changes which would directly affect timely response, such as illness of employees who normally process these forms.

In making a determination whether good cause exists for the late response you must look at all factors surrounding the event such as:

- The size and nature of the business.
- Whether there was any expectation by the employer of a forthcoming claim(s) especially if layoff notices were recently issued.
- Whether the employer completed and returned other required employment related information, such as IRS forms, in a timely manner if the same unforeseen circumstances existed during the 10 days prior to the time the response was due.

The key to determining whether good cause existed when unforeseeable circumstances arose which resulted in a late filing, is whether the employer's actions were reasonable in that particular situation.

Once an employer discovers a response is late, the length of time it took for the employer to respond to DUA should be considered. Generally, late responses should be submitted within 48 hours of the discovery that they are late, unless extremely compelling reasons dictate that a longer time period is needed. The two main points to consider when any particular set of facts is reviewed are:

- The reasonableness of the employer's actions, or its good-faith efforts to respond when it discovers the response is late, and,
- The total set of circumstances contributing to a late response in the first place.

Note that in some cases an employer may realize that a request for information has been received prior to the 10-day return date, but is still unable to make a timely return due to unforeseeable circumstances. In such cases the employer must show that it made a reasonable effort to comply with the 10 day filing requirement as soon as it was feasible.

1633 PROCEDURES

(A) Timing and Form of Protest

Timeliness is an issue only when a response involves a protest. A response has been returned with a protest if:

- The employer indicates any of the following as the reason for separation when completing the response: Still employed or on call, Reasonable assurance of reemployment, On a leave of absence, On strike or locked out, Discharged or quit due to a conviction of a felony or misdemeanor, Suspended for violation of company rules or policy, Discharged for deliberate misconduct or violation of company rules or policy, including absenteeism or tardiness, Quit.
- Any additional items are selected indicating that the claimant received vacation pay, or severance pay without the required signing of a release of claims.
- Any other condition not itemized on the form is recorded in the comments section or elsewhere in the response by the employer and this information raises an issue of eligibility.
- A letter or other such document containing similar information is attached to or submitted with Form 1062 or 1074.

Whenever a response is returned late with a protest, a Determination as to Timely Return of Claim Notice, Form 0676 must be sent to the employer.

If an employer submits a response in a timely manner, and indicates "separation reason to follow" (or other similar wording) the DUA will not consider this a protest because the employer has not provided any information regarding the separation or other conditions that could impact the claimant's eligibility. If a protest is subsequently received, the DUA will consider it received on the date it is hand-delivered, postmarked or faxed to the DUA.

The date on a fax or the postmark on an envelope containing Form 1062/1074, is considered the date of receipt. A U.S. Postal Service postmark takes precedence over an in-house postage meter postmark when the two postmark dates are not the same. In order to establish the "lateness" of a response submitted by mail, it is necessary to have an envelope postmarked after the tenth day or a signature on the Form 1062 or 1074 dated after the tenth day.

(B) Informing the Employer of Penalties

Whenever you contact an employer regarding a late response, you must explain the penalties involved if it is determined that the response was returned late without good cause:

- The employer loses the right to appeal.
- He or she loses the right to appear at a hearing as an interested party; he or she may appear only as a witness and has no right to cross-examine other witnesses.

If wage information was also requested, additional penalties apply:

- The employer may be assessed a \$25 penalty.

Any benefits paid on the claim will remain charged to the employer's account.

(C) Reversals of Determinations Made Pursuant to §38(a) and/or §38(b)

If you determine that an employer, without good cause, failed to provide wage and/or separation information in a timely manner, the employer may appeal that determination.

If a review examiner subsequently reverses the determination at a hearing, the Hearings Department will return the case material to the claims office when it sends notification of the decision.

If separation information had been returned late without good cause and this determination is reversed at a hearing and the claim had been approved for the payment of benefits, mail the employer a Notice to Employer of Approved Claim, Form 124. Then place the folder in the tickler file pending possible appeal.

If the claimant had been disqualified, mail the employer a copy of the Notice to Claimant of Disqualification, Form 3720. Modify the determination data on the automated system to reflect reversal of the determination. Enter non-charging start and end dates for contributory employers if the wage information was provided timely or late with good cause as the result of a reversal at a hearing of a determination issued pursuant to §38(a).

1634 CIRCUMSTANCES AND POLICIES**(A) Incorrect Address**

An employer with more than one office may allege that the DUA sent Form 1062 or 1074 to the wrong location. This also may occur when an employer has a single location. In such cases, the address of record is considered correct unless the employer has previously informed the DUA of an address change/correction. A single location employer or a multi-location employer must notify DUA in advance as to the location to which Forms 1062/1074 should be addressed. If the employer has submitted a request to change the address of record and such change is in process, timeliness should be granted

The claims office should mail an Employer Change of Address Request, Form 0566, to an employer whenever a request for address change /correction is received by telephone. Instruct the employer to complete the form and return it to the address indicated on the form. Forms 1062/1074 may be mailed directly to the employer's agent provided the agent represents the employer when providing both separation and wage information.

When address changes/corrections are recorded by the employer on Form 1062/1074, the claims offices will send a copy of Forms 1062/1074 along with the envelope the Form was received in to:

Division of Unemployment Assistance
Status Department - 5th Floor
19 Staniford Street
Government Center
Boston, Massachusetts 02114

In identifying the correct employer and employer identification number, claims offices will query the UI Automated System using a QALPHA inquiry. QALPHA provides the company name, city/town, and employer identification number. A QENUM inquiry may be used, inputting the employer identification number to access an employer record and verify the address on file.

(B) Timely Letter – Late Form 1062/1074

If an employer who provided timely separation information that might impact the claimant's entitlement to benefits in a previous letter, subsequently submits a response to a request for wage and separation information, a determination on good cause for the late return of the response shall be made as follows:

In the absence of any good cause for late response as defined previously in this section, the response shall nevertheless be considered late with good cause when failure to respond in a timely manner did not interfere with the DUA's prompt and accurate determination of the claim (since pertinent eligibility information was previously provided by letter).

In the absence of any good cause for late response as defined previously in this section, the response will be considered late and without good cause if a late response contained information not previously provided by letter that caused "harm" to the claimant.

For example, if the employer's original letter response did not contain pertinent pension information and a response subsequently submitted late and without good cause provided pension information resulting in the claimant being determined to have been overpaid benefits, it can be said that harm resulted from the late response. The employer will be barred from being a party to further proceedings relative to the claim even though separation information was earlier provided by letter and in a timely manner.

(C) Unforeseeable Circumstances: Size and Nature of Business

Both the size and nature of the employer's business may be considered when evaluating the impact of "unforeseeable circumstances" on the employer's ability to return requested wage and or separation information.

For example: An employer owns a small construction company. His wife serves as the office and business manager. The employer spends most of his time supervising work at various construction sites located away from the office. During her maternity leave, the wife handles the office work at home because the small size of the business precludes hiring a temporary office manager. The employer stops by the office once a week to retrieve the mail and bring it home to his wife. Ten days after a Form 1062 is sent to the employer, he picks up the mail and takes it home. The wife completes and returns the Form 1062 two days later.

Given the size and type of the business, the employer made reasonable arrangements to ensure that his mail and business affairs were attended to in a timely manner. In addition, he returned the Form 1062 promptly after he became aware of it. Therefore, the Form 1062 will be determined to be returned late with good cause. The employer should be sent a Form 0676, with Block #1 checked off.

(D) Unforeseeable Circumstances: Absence of Staff – Good Cause

The employer is a small business whose business affairs (including the completion and return of Forms 1062) are handled by the president and treasurer. Because the president needs to be away on business at the same time that the treasurer is absent due to a serious illness, the president arranges for the vice-president to be available to handle the business affairs. The vice-president is called away unexpectedly to attend to an urgent personal matter during which time Form 1062 arrives. When the president returns twelve days later, he immediately completes and returns the Form.

Given the circumstances, the employer made a reasonable effort to ensure that appropriate personnel would be available to handle business matters. Due to an unforeseeable occurrence, the designated individual became unavailable. In addition, the employer returned Form 1062 as soon as he became aware of it.

Therefore, Form 1062 will be determined to have been returned late but with good cause. Send the employer Form 0676, with Block; #1 checked off.

(E) Unforeseeable Circumstances: Absence of Staff – Not Good Cause

When evaluating the impact of unforeseeable circumstances on the employer's ability to return Form 1062/1074 in a timely manner, it must be established not only that the circumstances (e.g., absence of staff) were unforeseeable but that these circumstances were directly responsible for the employer's failure to return Form 1062/1074 in a timely manner.

For example: An employer has thirteen employees including a president, treasurer, and office manager, all of whom are capable of completing Form 1062/1074. The president is out of the office for an extended period of time due to illness. The treasurer, the president's husband, is absent sporadically as a result. During this time, Form 1062 is received. Although the treasurer is in the office during the next week, he fails to open the mail placed on his desk which includes the Form 1062. Ten days after receiving the Form, he checks his mail and gives the Form to the office manager to complete. Because of her heavy workload, the office manager fails to complete and return the Form 1062 until four days later.

In this case, the president's illness (the unforeseeable circumstance) cannot be said to have directly affected the timely return of Form 1062 since there were two other individuals in the office capable of performing this task. Therefore, the Form 1062 will be determined to be a late return without good cause. The employer should be sent a Form 0676, with Block #2 checked off.

(F) Wage Information Missing

If an employer submits a response with the requested separation information in a timely manner (or late, but with good cause) but fails to provide all requested wage information, the employer will be considered a party to further proceedings relative to the claim. Send the employer a copy of the determination. However, since the employer failed to provide all requested wage information, the employer may not be relieved of any charges resulting from the payment of benefits on the claim.

Requested wages have been provided when: (1) Form 1062 has been returned with all requested wage information recorded on the form, (2) a letter, print-out, or other such document providing wage amounts for each period for which wages were requested is returned, or (3) wage information is submitted electronically.

(G) Separation Information Missing

If an employer submits a response with requested wage information but fails to provide separation information and an issue exists due to information provided by the claimant, the employer is not entitled to a copy of the determination.

Having failed to provide the requested separation information, the employer is no longer an interested party to further proceedings relative to the claim for benefits. However, if wage information was provided, either in a timely manner or late but with good cause, the employer is entitled to relief from any charges if a determination is made to disqualify the claimant. Complete data-entry of the determination via UNMD to insure removal of charges from the employer's account.

If separation information is received subsequent to a determination having been made, either in a timely manner or late but with good cause, send the employer a copy of the determination. Modify the determination data via UNMD to record the mailing of the determination to the employer. If separation information is subsequently received late and without good cause, send the employer a Notice as to Timely Return of Claim Notice, Form 0676, Block #2. Do not send a copy of the determination notice.

1640 TIMELINESS OF APPEALS

1641 STATUTE

§39(b)

"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 in accordance with procedures prescribed by the Commissioner 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..."

[See also: 430 CMR 4.14, 4.15 and 801 CMR 1.02 (4)]

1642 PRINCIPLES

Both claimants and employers have the right to appeal a determination with which they disagree, as long as they are still "interested parties", i.e., they have preserved their rights in the case by observing prescribed rules and deadlines.

In accordance with §39(b), an employer or a claimant has ten days from the mailing of the notice to appeal an adverse determination. The ten days include Saturdays, Sundays, and legal holidays unless the tenth day (the final day) falls on one of those days, in which case an appeal is considered timely if received, faxed or postmarked the next business day.

An appeal filed after the tenth day, but within 30 days of the mailing of the determination, may be accepted if you determine that the appellant had good cause for the late appeal.

1643 ISSUES: TIMELINESS OF APPEALS

(A) Filing an Appeal

Before issues of timeliness can arise, an appeal must be filed. An interested party may request a hearing within ten calendar days after the issuance of the determination notice. The ten day filing period may be extended by the Commissioner, for good cause, provided the requesting party files his or her request for a hearing within thirty calendar days after the determination has been issued.

(B) Hearing Requests in Writing

All requests for hearings must be made in writing. If the claimant or employer appears in the claims office to request a hearing, have him or her complete the tear-off form on the reverse side of the determination or take a statement of appeal on a Form 113 or 113-B. If the claims office receives a letter or other written request for a hearing, the claims office must attach the envelope to the letter or other written request. In either case, the appeal filed in person or by mail is to be entered on the UAPP Screen of the computer and forwarded to the appropriate regional hearings office along with all case material on the day received. If a claimant or employer telephones the claims office, advise him or her to put the request in writing and mail or fax it within the time limits.

(C) Receipt of Appeal Establishes Timeliness

A request for a hearing shall be deemed filed on the date it is received in hand, faxed, or if mailed, a request for hearing shall be deemed filed on the date contained in the postal cancellation stamp or postmark and not the date contained on a postal meter stamp. A request is timely if it is delivered to DUA, faxed or postmarked on or before the tenth (10th) calendar day after the date the Commissioner's determination was issued.

(D) Appeal Filed After 10 Days But Within 30 Days

If an appeal is filed after the ten-day limit, but within 30 days, a Claimant's Statement of Facts, Form 113 (or 113-B as appropriate), must be completed to record the reason for the late appeal. You must then determine whether there was good cause for the late filing. In all cases, the burden of proof is on the appellant.

The Commissioner may extend the ten-day filing period when the appellant establishes that circumstances beyond his or her control prevented the filing of a request for a hearing within the prescribed ten-day filing period.

(E) Good Cause

Examples of good cause for failure to file a timely request for a hearing include, but are not limited to, the following:

- A delay by the United States Postal Service in delivering the Commissioner's determination.
- Death of a household member or an immediate family member (including a spouse, child, parent, brother, sister, grandparent, stepchild or parent of a spouse).
- A documented serious illness or hospitalization of a party, household member or an immediate family member during the entire ten-day filing period or a portion of the appeal period if the party's ability to timely appeal is thereby affected.
- An emergency family crisis which requires a party's immediate attention during the entire ten day filing period or a portion of the appeal period if the party's ability to timely appeal is thereby affected.
- An inability to effectively communicate or comprehend English and the party is unable to find a suitable translator to explain the notice of determination that was issued.
- 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.
- A continuing absence from the Commonwealth, while seeking employment, during all or most of the ten day filing period.
- Intimidation, coercion or harassment by an employer resulting in a party failing to timely request a hearing.
- A DUA employee directly discourages a party from timely requesting a hearing and such discouragement results in a party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing.
- An inability to understand that a request for a hearing must be filed within the ten day filing period, because of illiteracy or a psychological disability.
- The individual's need to address the physical, psychological and legal effects of domestic violence as defined in M. G. L. chapter 151A, §1(g^{1/2}).
- Any other circumstances beyond a party's control which prevented the filing of a timely appeal.

(F) Determination Issued on Form 0510

Issue your determination on the timeliness issue on a Determination as to Timeliness of Appeal, Form 0510. If the appellant has good cause for the late appeal, indicate this by checking block #1(a). Approve the late appeal issue on the UI automated system and process the appeal on the original determination.

If the appeal is determined to be late without good cause, issue Form 0510 checking block #1(b). The appellant may appeal this determination.

(G) Late Appeals Filed Beyond 30 Days

The thirty 30-day limitation on filing a request for a hearing shall not apply when:

- The appellant establishes that a DUA employee directly discouraged the appellant from requesting a hearing in a timely manner and such discouragement resulted in the party believing that a hearing was futile or that no further steps were necessary to file a request for hearing. Note that the direct discouragement must actually result in the person believing that an appeal would be futile or unnecessary. If the claim adjudicator who made the original determination is alleged to be the person who discouraged the party from requesting a hearing, that same claim adjudicator should not make the determination on timeliness.
- The Commissioner's determination is received by the party beyond the thirty day extended filing period and the party promptly files a request for hearing.
- 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.
- 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.

(H) Fact finding: Late Appeals Beyond 30 Days

When an appeal is filed after the 30-day limit, make a determination on timeliness. Take a statement on the reason for the late appeal. Some pertinent questions to ask, if relevant to the particular case are:

- What were you told by a DUA employee regarding filing an appeal?
- When did you receive the determination?
- When did you first become aware of the determination?
- What did the employer do that affected your filing a timely request for hearing?

Whenever there is an allegation made involving another person, a rebuttal should be obtained.

If the late appeal is approved, indicate this by issuing Form 0510 and checking block #2(a). The request for hearing on the original disqualification is to be processed and all material is to be forwarded to the appropriate regional hearing office after entry of the appeal via the UAPP screen.

If the appeal is denied, issue the denial using Form 0510 and checking block #2(b). The appellant may appeal this determination. If such an appeal is filed, all case material relative to both the determination on the late appeal and the original determination will be forwarded to the appropriate regional hearing office after entry of the appeal via the UAPP screen.

Your request for hearing was filed beyond 30 days of the date the determination was issued. It is determined there is no justification to consider your request for a hearing timely. Your request for hearing on the merits of your case is dismissed.

(I) Appeals to the Board of Review

As far as the claims office is concerned, timeliness is not an issue on appeals to the Board of Review, with the exception of the labor dispute appeals [see below]. However, include a statement on Form 1801 [Appeal to the Board of Review] about the reason for the late appeal. The Board of Review determines the timeliness issue itself.

(J) Labor Dispute

All appeals of labor dispute determinations, whether timely or late, will be processed by the Determinations Department. Forward any requests received in the claims office to the Determinations Department.

1644 REQUEST FOR RECONSIDERATION OF A DECISION PURSUANT TO §12 OR §39(b)**1645 STATUTE****§71**

§71 reads in part as follows:

"The Commissioner may reconsider a decision issued pursuant to §12 or subsection (b) of §39 for which no application for review pursuant to §12 or §40 was filed when in his judgment it appears that because of newly discovered evidence or for any other reasonable cause the Commissioner should reconsider the decision. The commissioner shall not reconsider any decision after one year from the date of the original decision Any party who files a request for reconsideration with the Commissioner shall mail a copy of said request to every other party to the original hearing.

If the Commissioner reconsiders a decision pursuant to this section, the Commissioner should revoke the original decision and reopen the original hearing, giving notice to any parties to the original hearing. The Commissioner or the Commissioner's representative shall conduct the hearing in accordance with the procedures prescribed by §12 or subsection (b) of §39, whichever is applicable. The Commissioner or the Commissioner's representative shall give notice of such decision, together with the findings and reasons thereof, to the parties. Any party aggrieved by the decision may file an application for review as provided by §12 or §40, whichever is applicable. Benefits shall be paid promptly or denied in accordance with such decision. Unless action is taken pursuant to said §12 or said §40, the decision shall be final on all questions of fact and law.

Subject to the same limitations and for the same reasons, the Commissioner may reconsider a decision in any case in which the board of review or court has rendered a decision, and may apply to said board or court to revise or modify the decision. The board or court may affirm, modify or revoke such decision.

The decision of the Commissioner not to reconsider a decision shall be final and not subject to appeal pursuant to any provision of the chapter."

1646 DEFINITIONS

"Commissioner" means Commissioner of the Division of Unemployment Assistance (or designee).

"Party" means an individual or employing unit whose legal rights duties or privileges has been decided in a hearing conducted pursuant to MGL Chapter 151A, §12 or MGL Chapter 151A, §39(b) and who was entitled to participate in the hearing.

"Request for Reconsideration" means a document submitted by a party (or representative) requesting review of a decision issued pursuant to MGL Chapter 151A, §12 or MGL Chapter 151A, §39(b).

1647 PRINCIPLES

(A) Restriction on Filing

A party aggrieved by a decision issued pursuant to MGL Chapter 151A, §12 or MGL Chapter 151A, §39(b) may file a request for reconsideration of said decision with the Commissioner, provided that no application for review has been filed pursuant to MGL Chapter 151A, §12 or MGL Chapter 151A, §40.

(B) Earliest Date Request May Be Filed

The request for reconsideration may be filed no earlier than 30 days and no later than one year from the mailing date of the hearings decision.

(C) Determination of Timeliness

In determining whether a party has filed a timely request for reconsideration or a response to a request for consideration, the provisions of 801 CMR 1.02(4) providing that papers shall be filed according to the procedures set forth in 801 CMR 1.01(4)(a) through (e) apply.

"801 CMR 1.01(4) Time.

(a) Timely Filing. Parties must file papers required or permitted to be filed with the Agency pursuant to 801 CMR 1.00, or any provision of applicable law, within the time provided by statute or Agency rule. Unless otherwise provided by applicable statute or regulation, Parties must file papers at an office of the Agency or with the Presiding Officer.

(b) Manner of Filing. Any recipient of papers filed as provided in 801 CMR 1.01 (4)(a) shall stamp papers with the date received. The recipient shall provide on request date receipts to Persons filing papers by hand-delivery during business hours. All papers filed by U. S. mail shall be deemed filed on the date contained in the U. S. postal cancellation stamp or U. S. postmark, and not the date contained on a postal meter stamp. Papers filed by Electronic Medium shall be deemed filed at the office of the Agency or with the Presiding Officer on the date received by the Agency or Officer during usual business hours but not later than 5:00 P. M. Papers filed by all other means shall be considered hand-delivered, and shall be deemed filed on the date received by the Agency during usual business hours. Papers received after usual business hours shall be deemed filed on the following business day.

(c) Notice of Agency Actions. Notice of actions and other communications from the adjudicating Agency, or its designee, shall be presumed to be received upon the day of hand-delivery or, if mailed, three days after deposit in the U. S. mail. The postmark shall be evidence of the date of mailing.

(d) Computation of Time. Unless otherwise specifically provided by 801 CMR 1.00 or by other applicable law, computation of any time period referred to in 801 CMR 1.00 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period is included unless it is a Saturday, Sunday, or legal holiday or any other day on which the office of the Agency is closed, when the period shall run until the end of the next following business day. When the time period is less than seven days, intervening days when the Agency is closed shall be excluded.

(e) Extension of Time. The Agency or Presiding Officer may, for good cause shown, extend any time limit contained in 801 CMR 1.00, unless otherwise restricted by law. All requests for extensions of time shall be made by motion before the expiration of the original or next previous extended time period. The filing of such motion shall toll the time period sought to be extended until the Presiding Officer acts on the motion. 801 CMR 1.01(4)(e) shall not apply to any limitation of time prescribed by statute, unless extensions are permitted by the applicable statute.

(D) State Of Appeal Period Pursuant to §12 or §40

The filing of a request for reconsideration shall not stay the running of the appeal period provided by MGL Chapter 151A §12 or MGL Chapter 151A §40.

(E) Filing Requirements

A party who files a request for reconsideration shall mail by certified mail return receipt requested, a copy of said request to every other party to the original hearing. Within ten days from mailing of the notice, any party so notified may file with the Commissioner a written statement giving the reasons for not allowing reconsideration and shall mail a copy to the party requesting reconsideration.

(F) Written Request

A request for reconsideration must be in writing, include a statement of the specific reasons reconsideration should be allowed, and must indicate that a copy of the request was mailed by certified mail, return receipt requested, to every other party to the original hearing.

(G) Reasons for Reconsideration

The Commissioner may reconsider a decision because of either (i) newly discovered evidence or (ii) a showing that the original decision was based on an error of law or procedural irregularity.

(H) Commissioner's Own Motion

The Commissioner may reconsider a decision on his own motion provided that the reconsideration is made within one year from the mailing date of the original decision.

(I) Denial of Reconsideration

If the Commissioner denies the request for reconsideration, the denial is final and not subject to final appeal.

(J) Reopening of Hearing

If the Commissioner allows the request for reconsideration, the original hearing shall be reopened, evidence taken, and a new decision with new appeal rights rendered.

(K) Payment of Benefits Pending Decision

If the Commissioner reopens the original hearing, benefits shall be paid or denied in accordance with the original decision until such time as a new decision is issued.

(L) Transmittal of Requests for Reconsideration

Requests for reconsideration should be mailed or sent to the Legal Department, 19 Staniford St., Boston, MA 02114.

1648 CONDITIONS FOR RECONSIDERATION**(A) Initiated by the Commissioner**

Upon his own motion or by request filed by an aggrieved party, the Commissioner may reconsider a decision issued pursuant to MGL Chapter 151A §12 or MGL Chapter 151A §39(b) for which no application for review pursuant to MGL Chapter 151A §12 or MGL Chapter 151A §39(b) has been filed when, in his judgment, it appears that because of newly discovered evidence or for any other reasonable cause, he should reconsider said decision.

(B) Newly Discovered Evidence

A party requesting reconsideration because of newly discovered evidence must demonstrate that, by proper diligence, it could not have discovered the evidence in time to present it at the original hearing and that such evidence is material to the issues in the case.

(C) Other Reasonable Causes

A party requesting reconsideration for any other reasonable cause must show that the original decision was based on an error of law or procedural irregularities underlying the original decision. Failure of the party to be represented at the hearing shall not constitute reasonable cause.

(D) Request Decided on the Record

Nothing shall require the Commissioner to conduct an interview or a hearing in allowing or denying reconsideration.

1650 DEPENDENCY ALLOWANCES**1651 STATUTE****§29(c)**

"An individual in total or partial unemployment and otherwise eligible for benefits shall be paid for each week of such unemployment, in addition to the amount payable pursuant to subsections (a), (b), or (d) as the case may be, the sum of twenty-five dollars for each unemancipated child of such individual who is in fact dependent upon and is being wholly or mainly supported by such individual, and who is under the age of eighteen, or who is eighteen years of age or over and incapable of earning wages because of mental or physical incapacity, or who is under the age of twenty-four and is a full-time student at an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, or who is in his custody pending the adjudication of a petition filed by such individual for the adoption of such child in a court of competent jurisdiction, and for each such child for whom he is under a decree or order from a court of competent jurisdiction to contribute to such child's support and for whom no other person is receiving allowances here under; provided, that such child is domiciled within the United States or the territories or possessions thereof. In no instance shall the dependency benefits as provided in this subsection be more than fifty percent of the individual's weekly benefit rate except that if such amount of dependency benefits includes a fractional part of a dollar, it shall be rounded to the next lower full dollar amount. The amount of dependency benefits determined as of the beginning of an individual's benefit year shall not be reduced for the duration of such benefit year; provided, however, that this provision shall not prevent the transfer thereof from one spouse to another in accordance with this section. If both the husband and wife receive benefits with respect to a week of unemployment only one of them shall be entitled to a dependency allowance with respect to any child. The Commissioner shall prescribe standards as to who may receive a dependency allowance when both the husband and wife are eligible to receive unemployment compensation benefits. No dependency benefits shall be paid unless the individual submits documentation satisfactory to the Commissioner establishing the existence of the claimed dependent. If the above provisions are satisfied, an otherwise eligible individual who has been appointed guardian of such child by a court of competent jurisdiction shall be paid such dependency benefits."

1652 PRINCIPLES

(A) "Dependent"

Claimants who are totally or partially unemployed and otherwise eligible to collect UI benefits may be entitled to receive a \$25 weekly dependency allowance per qualified dependent. The total dependency allowance payable may not exceed 50% of the individual's weekly benefit rate. Generally, a "dependent" is an unemancipated child (under 18 years old) who is in fact dependent upon, and wholly or mainly supported by, the claimant.

A "dependent" may also be an individual 18 years or older who is unable to earn wages because of a mental or physical incapacity or an individual older than 18 but younger than 24 years old who is a full-time student. In all cases, dependents must be living in the U.S. or its territories and possessions.

An unemancipated child is not free from parental control. Children under the age of 18 are considered unemancipated unless they are married or have an agreement (explicit or implied) with their parents that they are free from parental control and have a right to their own earnings. Once a child is gainfully employed and self-supporting, a member of the Armed Forces, or a direct recipient of UI benefits, he or she cannot be claimed as a dependent by a claimant.

(B) Claimant-Dependent Relationship

Claimants may be eligible to collect a dependency allowance if they have any of the following relationships to the claimed dependent:

- The parent.
- The step parent.
- Awaiting adjudication of a petition for adoption while the child is in the claimant's custody.
- Subject to decree or court order to contribute to the support of the child.
- A guardian appointed by a court of competent jurisdiction.

(C) Whole or Main Support

A dependent is considered wholly or mainly supported by a claimant when the claimant provides more than 50% of the child's support. The claimstaker will ask if the support comes from all expenses incurred, including but not limited to: housing, food, clothing, transportation, and other related expenses. It is possible, in fact, that neither parent would qualify for a dependency allowance. The claimant must establish that he or she was the child's main financial support during the base period of the claim.

(D) Parents Under a Court Decree

Claimants who are under a court decree or order to contribute to a child's support are eligible to receive a dependency allowance without having to satisfy the whole or main support test if no one else is receiving a dependency allowance for the same dependent. The purpose of this provision in the law was to extend dependency allowances to divorced or separated parents. Upon request, the claimant must produce a copy of the court decree or order.

Note that a claimant does not have to actually make court ordered payments to be eligible for dependency allowances so long as he or she is under court order to do so.

(E) Social Security Number Used to Verify Dependent's Existence

A claimant must provide the Social Security number of each dependent for whom an allowance is claimed before any allowance may be paid. A claimant will be asked to provide a Social Security number for each dependent claimed. If, during the course of the interview, the claimant is unable to provide the Social Security number for each claimed dependent, then the claimant will be instructed to call back once the Social Security number has been obtained. There is no set timeframe within which the required number must be provided but the claim adjudicator should set a reasonable deadline and inform the claimant that a determination will be issued on that date. In the event that the claimant indicates that the number can not be obtained or fails to respond with the necessary information in accordance with the specified deadline, then a disqualification will be issued.

(F) Burden of Proof

The burden of proof is on the claimant to produce documentation, when so requested. Documentation may be requested to verify the existence of the claimant, the claimant's relationship to the dependent, student status, whole or main support, the existence of a court order to pay support, etc.

(G) Allowance Claimed by Two Claimants

If two claimants simultaneously claim an allowance for the same dependent(s), a detailed statement regarding support of the dependent(s) must be taken from each claimant. The information must be specific and detail the amounts contributed for items such as rent, utilities, insurance, food, and clothing during the base period. If the other claimant is claiming through another office, that office must be contacted to obtain a statement. Both statements will be forwarded to the Determinations Department where a determination will be made.

(H) Student Status

A dependency allowance is payable for dependents under the age of 24 if the claimant provides the main financial support for the dependent and the dependent is a full-time student at an educational institution. "Educational" means that the institution maintains a regular faculty and curriculum and has a regularly organized body of students in attendance at the location where its educational activities are carried on.

Claimants who indicate the existence of a dependent between the ages of 18 and 24 will be asked if the dependent is attending a school or college and if so, will be asked to provide the name of the institution. If the responses are considered unsatisfactory, then the case will be forwarded for adjudication.

In these instances, claimants may be asked to provide documentation as proof of each full-time student dependent's current status (e.g., registration, acceptance letter, report card, bill or other appropriate official school documentation).

A student is considered "in attendance" during the vacation period between two academic years and during any holidays or breaks between semesters within an academic year. You may approve a dependency allowance for a student between high school and another educational institution. When necessary, the claimant may be asked to provide evidence, usually a letter of acceptance, that the child will be a full-time student when the next term begins, and will continue to be wholly or mainly supported by the claimant.

Dependents in a "cooperative" program, which combines academic instruction with work experience, are considered students during both classroom and work periods.

(I) Incapacitated, Incapable of Earning Wages

A dependency allowance is payable for a dependent child of any age if the claimant provides the whole or main financial support for the dependent and the dependent cannot earn any wages because of a mental or physical disability. A physician must complete a Dependency Medical Certificate, Form 3699, to confirm such incapacity.

1653 PROCEDURES**(A) Updating the Automated System Record**

When an application for a dependency allowance is referred for adjudication, the automated system record must be updated via UDEP to reflect the outcome of the adjudication process once a determination is made. If approved, the status code must be updated to reflect the approval of the allowance and payment start and end dates must be entered. If denied, the status code must be updated to reflect the denial. In all cases a determination must be entered via the UNMD transaction.

(B) Expired Claims

When a claimant requests a dependency allowance on a claim with an expired benefit year the application will be submitted directly to the Internal Control and Investigations Dept. (ICID) using the Request for Dependency Allowance Information, Form 0330-EXP. Staff in ICID will make a determination on the claimant's eligibility for the allowance. If ineligible, ICID will contact the appropriate CAU for issuance of the disqualification.

1654 CIRCUMSTANCES AND POLICIES**(A) Not The Claimant's Child, Step-Child, Adopted Child, Etc.**

To qualify for a dependency allowance, the claimant must be the parent, step-parent, legal guardian of the claimed dependent, be subject to a decree or court order to pay child support, or awaiting the adjudication of a pending petition for adoption. Even though all other criteria are met (i.e., the dependent is wholly or mainly supported by the claimant, under eighteen, etc.) the claimant is ineligible to receive a dependency allowance if the relationship of the dependent to the claimant is other than those specified in §29(c).

Form 3720 Explanation:

You are not eligible to receive a dependency allowance for (name of claimed dependent) because you are not the parent, step-parent, or court-appointed guardian of (name of claimed dependent). Neither are you awaiting adjudication of a petition for adoption nor subject to a decree or court order to contribute to the support of (name of claimed dependent).

(B) Over Eighteen – Not a Full-Time Student

A claimed dependent (although wholly or mainly supported by the claimant) may not meet the age requirements of §29(c). If the dependent is over the age of eighteen and not a full-time student (or incapacitated and incapable of earning wages) then a dependency allowance may not be paid.

Form 3720 Explanation:

You are not eligible to receive a dependency allowance for (name of child) because the child is over the age of eighteen and does not otherwise meet the requirements of §29(c) of the Law.

(C) Married Dependent

A married son or daughter is not considered to be a dependent even though this individual may in fact be a minor and the parent (claimant) is financially supporting him or her. The married child is considered emancipated and therefore the claimant cannot receive a dependency allowance pursuant to §29(c) of the Law.

Form 3720 Explanation:

You are not eligible to receive a dependency allowance for (name of child) because the child is married and no longer an unemancipated child pursuant to §29 (c) of the Law.

(D) Not Whole or Main Support

A child, claimed as a dependent, may meet other eligibility criteria (i.e., under 18, under 24 and full-time student, incapacitated and incapable of earning wages, etc.) but may be financially independent or be wholly or mainly supported by a person(s), or entity other than the claimant. If the claimant does not wholly or mainly support such child, then the claimant cannot receive a dependency allowance pursuant to §29(c) of the Law.

Form 3720 Explanation:

You are not eligible to receive a dependency allowance for (name of child) because the child is not financially dependent on you and you do not provide whole or main support for the child as required pursuant to the above-cited section of the Law.

(E) Disabled Dependent Child - Without a Physician's Statement

A claimant states that he or she is the main support for a dependent who is eighteen years old or older with a disability. However, the claimant is unable to produce a physician's statement that the dependent's disability permanently or indefinitely prevents him or her from earning wages. The claimant cannot receive a dependency allowance for this disabled dependent pursuant to §29(c) of the Law.

Form 3720 Explanation:

You are not eligible to receive a dependency allowance for (name of child) who is 18 years old or older because you have not established that he (she) is permanently or indefinitely incapable of earning any wages due to mental or physical disability.

(F) Disabled Dependent Other Than a Child

A claimant states that he or she is the main support for a dependent that is not a child of the claimant, but an adult relative with a disability. For the purposes of unemployment insurance, the individual is not considered a child or "dependent" of the claimant. Therefore, the claimant cannot receive a dependency allowance on behalf of the disabled individual pursuant to §29(c) of the Law.

Form 3720 Explanation:

You are not eligible to receive a dependency allowance for (name of claimed dependent) because you are not the parent, step-parent, or court-appointed guardian of (name of claimed dependent). Neither are you awaiting adjudication of a petition for adoption nor subject to a decree or court order to contribute to the support of (name of claimed dependent).

(G) Permanent Residence Outside the Country

A claimant states that he or she is the main support for a dependent who resides permanently outside of the country. A dependency allowance is not payable for any child who lives outside the United States, the District of Columbia, U. S. Virgin Islands, Territory of Guam, American Samoa, Trust Territory of the Pacific, or Puerto Rico. The claimant cannot receive a dependency allowance pursuant to §29(c) of the Law. Note that allowances are payable for children who are residing in another country temporarily, e.g. to attend school, travel during vacation, etc.

Form 3720 Explanation:

You are not eligible to receive a dependency allowance for (name of child) because he (she) is not domiciled within the United States, its possessions or territories.

(H) Failure to Provide Dependent's Social Security Number

A claimant must provide a Social Security number for each dependent for whom an allowance is claimed. Failure to provide the required Social Security number will result in a denial of the claimant's application for the allowance. Prepare a Notice to Claimant of Disqualification citing Section 29(c) of the Law and using the following explanation:

Form 3720 Explanation:

You are not eligible to receive a dependency allowance for (name of child or children) because you have not provided the required Social Security number of the dependent(s) and therefore do not meet the requirements for receipt of the allowance as specified in the above-cited section of the law.