

BR-125584

CLAIMANT APPELLANT:
Hearings Docket #623802

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Thomas Landers, a review examiner of the Department of Unemployment Assistance (DUA), that the claimant failed to show that he had justification for filing a late appeal of a DUA determination. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

A determination denying benefits was mailed to the claimant on August 13, 2012. The claimant appealed the determination, which was received by the DUA postmarked September 26, 2012, forty-four days after it was mailed to him. On October 2, 2012 the DUA determined that there was no justification to consider the claimant's appeal of the August 13 determination to be timely. The claimant appealed the October 2, 2012 determination to the Hearings Department. Following a hearing on the merits, which the claimant attended, the review examiner affirmed the agency's initial determination and denied the claimant's appeal in a decision rendered on January 28, 2013.

The claimant's appeal was denied after the review examiner determined that the claimant failed to establish that there was justification for considering his appeal to be timely, under 430 CMR 4.15 and G. L. c. 151A, §39(b). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we afforded the claimant an opportunity to submit written reasons for disagreeing with the decision. The claimant responded. Our decision is based upon our review of the entire record.

The issue on appeal is whether there is justification to consider that the claimant filed a timely request for a hearing, where he was at sea as a merchant marine for the entire ten-day appeals period and he sent back his request for a hearing within a reasonable time when he returned home.

Findings of Fact

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

1. On 5/30/2012 the claimant filed a claim for benefits.
2. On 8/13/2012 a form 3720 was mailed to the claimant informing him of his disqualification from receipt of benefits for in accordance with Section 1 (r) (3) of the law.
3. The claimant's address is correctly recorded with the agency.
4. At the time of the mailing of the form 3720 the claimant was at sea working as a merchant marine.
5. Upon his return from work the claimant retrieved the form 3720 from his Post Office box and returned his request for appeal on 9/26/2012.
6. The claimant authorizes one other than himself to retrieve mail from his Post Office box.

Ruling of the Board

The Board adopts the review examiner's findings of fact, except for Finding of Fact #6, which, as we explain below, we do not adopt because it is not based on substantial evidence in the record. 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. . .

The DUA mailed the determination to the claimant on August 13, 2012, and he had ten days from the date of mailing in which to appeal. The tenth day after August 13, 2012 was August 23, 2012. The claimant's appeal was postmarked September 26, 2012, forty-four days after the determination was mailed and thirty-three days after the ten-day deadline.

In addition to the provisions of G.L. c. 151A, § 39(b) noted above, the agency has specific regulations regarding how to consider appeals postmarked more than thirty days after the mailing of a determination. 430 CMR 4.15 provides, in pertinent part, as follows:

The 30 day limitation on filing a request for a hearing shall not apply where the party establishes that:

- . . . (2) The Commissioner's determination is received by the party beyond the 30 day extended filing period and the party promptly files a request for hearing;
- (3) The Commissioner's determination is not received and the party promptly files a request for a hearing after he or she knows that a determination was issued. . . .

In interpreting this regulation and G.L. c. 151A, § 39(b), as we must do with all provisions of Chapter 151A, we construe it "liberally in aid of its purpose, which purpose is to lighten the burden which now falls on the unemployed worker and his family." G.L. c. 151A, § 74.

In this case, the review examiner found that the claimant was at sea working at the time the DUA mailed a determination to him. He was unaware that a determination existed at all. Contrary to the review examiner's Finding of Fact # 6, the claimant offered uncontested testimony during the hearing that only he had access to his post office box.¹ Under these circumstances, we think that the claimant can be considered to have received the determination, under 430 CMR 4.15(2), when he returned home following his time at sea. The review examiner found that at that time, he submitted his request for an appeal of the August 13, 2012 determination. He acted promptly in doing so, very soon after he learned of the determination. Where the claimant's reasons for not appealing the August 13 determination are directly attributable to an activity that Chapter 151A is designed to encourage, namely, working, we think it would be wholly unjust and not within the spirit of the law to deny him even the opportunity to present the merits of his case to a review examiner.

Therefore, we conclude as a matter of law that, on the facts of this case, there is justification to consider the claimant's appeal of the August 13, 2012 determination to be timely, even though it was postmarked September 26, 2012.

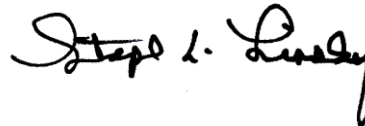
¹ The claimant testified to this at the hearing, and the review examiner stated that he understood what the claimant was saying. In his appeal to the Board, the claimant correctly points out that he never stated during the hearing that another person had access to his mail.

The review examiner's decision is reversed. The DUA shall schedule a hearing on the merits of the August 13, 2012 determination.

BOSTON, MASSACHUSETTS
DATE OF MAILING - May 30, 2013



John A. King, Esq.
Chairman



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- July 1, 2013

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.