

## Chapter 12: Reconsiderations and appeals

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## Section 1. Reconsideration of determinations

In circumstances specified in § 71, the Director is authorized to reconsider determinations by adjudicators and decisions by review examiners, the Board of Review, and courts. This Handbook only discusses the reconsideration of determinations by adjudicators.

### A. Statute

#### G. L. c. 151A, § 71

The commissioner may reconsider a determination whenever he finds that (1) an error has occurred in connection therewith; or (2) wages of the claimant pertinent to such determination but not considered in connection therewith have been newly discovered; or (3) benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentation of fact; provided, however, that with respect to (1) and (2) no such redetermination shall be made after one year from the date of the original determination; and provided, further, that with respect to (3) no such redetermination shall be made after four years from the date of the original determination; and provided, further, that the time limitations specified above shall not apply with respect to an award of back pay received by an individual for any week in which unemployment benefits were paid to such individual. If the commissioner reconsiders a determination under this section, parties entitled to notice of the original determination shall be afforded an opportunity for an interview before the commissioner or his authorized representative for the purpose of presenting evidence or refuting opposing positions before such a determination can be made.

### B. Principles

Depending on the circumstances, a determination may be reconsidered within either one or four years from the date it was made. The one-year limitation applies if it is concluded that the determination resulted from some error or that newly-discovered claimant wages pertinent to the determination were not considered. The four-year limitation applies if benefits were allowed or denied, or the amount of benefits was fixed, based on some misrepresentation of fact.

The focus on determinations is significant because a single claim may lead to multiple determinations. The first determination of each issue on the claim is a “new determination” with its own one- or four-year limitation period for reconsideration. For example, DUA may determine initially that a claimant is monetarily eligible for benefits and had a qualifying separation. Those issues may

not be redetermined more than one year after the original determination of monetary eligibility/qualifying separation, unless there was fraud.

Subsequently, DUA may determine that, for a period of time, the claimant was not available for work. Each of these determinations is subject to reconsideration and has its own one- or four-year limitation on the time period for issuing a reconsideration under § 71, starting from the date of the determination potentially to be reconsidered.

An error may be procedural or legal, or an accidental or intentional act or failure to act on the part of DUA, the claimant, the employer, or someone acting on behalf of the claimant or the employer. Adjudicators should notify their managers if an adjudicator becomes aware of an error or misrepresentation that may warrant reconsideration.

### **1. Factual misrepresentation**

For a misrepresentation of fact to support a need for a redetermination, the fact must have been material to benefits having been allowed or denied, or to fixing the amount of benefits. A misrepresentation of fact results from either (1) the intentional misstatement of a fact, or (2) the intentional failure to disclose a fact that the individual knew or should have known to be material. Misrepresentations, in addition to leading to reconsideration, may have additional consequences.

## Section 2. Appeals

Employers with interested party status (IP employers) and claimants have the right to appeal an adverse determination. (Further discussion of employers and interested party status is in Chapter 6- Separations.)

### A. Statute

#### G. L. c. 151A, § 39(b)

(b) Any interested party notified of a determination may request a hearing within 10 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....

### B. Appeal requirements

#### 1. Timeliness of appeals

In accordance with § 39(b), IP employers and claimants have 10 days from the mailing of the determination to appeal an adverse determination. If the 10th day falls on a Saturday, Sunday, or legal holiday, the response is due the next business day.

An appeal filed after the 10th day, but within 30 days of the mailing of the determination, may be accepted if the appellant had good cause for the late appeal.

In certain limited circumstances beyond the party's control, an appeal filed after the 30-day period may be deemed timely.

#### 2. Form of hearing requests

All requests for hearings must be made in writing or by a party or a party's representative through UI Online. If the claimant or employer appears in the claims office to request a hearing, DUA staff should instruct the party either to file the hearing request using UI Online or to make the request in writing. DUA staff should immediately enter the appeal and scan the written request into UI Online. A claimant or employer who telephones DUA to request a hearing should be advised to appeal through UI Online or to put the request in writing and mail or fax it within the time limits to the mailing address or fax number provided in the determination being appealed.

### **3. Determining filing date**

A request for a hearing that is sent by mail is deemed filed on the postmark date, even if the envelope also contains a postage meter stamp. Otherwise, a request is deemed filed when received by DUA during business hours. Requests received by means other than mail that arrive after business hours are deemed filed the next business day.

### **4. Appeal filed after 10 days but within 30 days**

The Director may extend the 10-day filing period when the appellant establishes that circumstances beyond the appellant's control prevented the filing of a request for a hearing within the prescribed 10-day filing period.

If an appeal is filed after the 10-day limit, but within 30 days, conduct fact-finding to determine whether there was good cause for the late filing. In all cases, the burden of proof is on the appellant to show good cause.

#### **a. Good cause**

Under 430 Code Mass. Regs. § 4.14, 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 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 10-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 10-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 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 10-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 10-day filing period, because of illiteracy or a psychological disability.
- The individual's need to address the physical, psychological, or legal effects of domestic violence as defined in § 1(g<sup>1/2</sup>). (For more information about domestic violence and UI, see Chapter 6- Separations.)
- Any other circumstances beyond a party's control which prevented the filing of a timely appeal.

## **5. Appeals filed beyond 30 days**

Under 430 Code Mass. Regs. § 4.15, DUA may allow a late appeal request made beyond 30 days if the party establishes one of the following limited circumstances:

- A DUA employee directly discouraged the party 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 party believing that an appeal would be futile or unnecessary. If the adjudicator who made the original determination is alleged to be the DUA employee who discouraged the party from requesting a hearing, that same adjudicator should not make the determination on timeliness.)
- The determination was received by the party beyond the 30-day extended filing period and the party promptly filed a request for hearing.
- The determination was not received and the party promptly filed a request for a hearing after learning 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.

## **6. Late appeals by LEP claimants**

Claimants with limited English proficiency (LEP claimants) whose preferred language is among those listed in § 62A (see Chapter 1- Adjudicator responsibilities) and who did not receive the determination in their preferred language are considered to have filed a timely request for a hearing if filed within 60 days of the mailing date of the determination. A request for a hearing filed beyond 60 days by such a claimant is considered timely if the delay in filing was caused by the determination not having been in his or her preferred language.

### **C. Appeals to the Board of Review**

Appeals from decisions by review examiners must be submitted to the Board of Review for a decision on the merits and on timeliness. Only the Board of Review decides the timeliness of appeals to the Board.

### **D. Labor disputes**

Determinations involving Labor Disputes under § 25(b) are made by the UI Policy and Performance Department (UIPP). Appeals from these determinations go directly to the Board of Review.

### **E. Appeal of ineligible monetary determinations**

Wage processors receive appeals of monetary determinations. All monetary determinations are appealable. If the monetary determination being appealed has to do with services performed by a claimant that may be exempt (not employment) under § 3, § 4A, § 6, or § 6A, or the claimant's status as an independent contractor under § 2, and a status determination has not yet been done, the wage processor should request a status determination.

### **F. Reconsideration of hearing decisions**

Under G. L. c. § 71, claimants and employers may request reconsideration of a hearing decision issued under § 39(b) or § 12 when there is no appeal pending and the party finds new evidence suggesting that a decision may be based on an error of law or procedural irregularities. The party seeking reconsideration must establish that it could not have discovered the evidence in time to present it at the hearing and that it is material to the issues in the case. See applicable regulations at 430 Code Mass. Regs. § 4.34.