

0013 2477 06 (May 7, 2015) – Claimant who certified for benefits from New Zealand did not meet the registration and filing requirements under G.L. c. 151A, § 25(a) and the DUA regulations.

**Board of Review**  
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**Issue ID: 0013 2477 06**  
**Claimant ID: 254642**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41; we affirm in part and reverse in part.

The claimant separated from her prior employer and filed a claim for unemployment benefits with the DUA, which was denied in a determination dated May 14, 2014. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner modified the agency's determination in a decision rendered on December 16, 2014, denying benefits for the weeks ending January 18, 2014, through April 12, 2014, but allowing benefits for the two weeks ending January 4, 2014, and January 11, 2014. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to establish that she met the filing and registration requirements, under G.L. c. 151A, § 25(a). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's conclusions are supported by substantial and credible evidence and free from error of law. Specifically, the Board must decide whether the examiner correctly concluded that (1) the claimant did not meet the filing and certification requirements of G.L. c. 151A, § 25(a), because the claimant certified electronically from New Zealand, and (2) G.L. c. 151A, § 25(a), allows the claimant one bi-weekly certification from outside the United States because she remained able, available, and actively seeking work, pursuant to G.L. c.151A, § 24(b), during this two-week period.

### **Findings of Fact**

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

1. On November 18, 2013, the claimant filed an initial claim for unemployment benefits effective November 17, 2013. The Department of Unemployment Assistance determined the claimant was monetarily eligible to receive weekly unemployment benefits in the amount of \$679.00.
2. The claimant has been laid off by two employers in the last five years.
3. The claimant's profession is in oncology pharmaceutical sales.
4. The claimant has worked in this profession in the United States and in New Zealand.
5. The claimant maintains dual citizenship in the United States and New Zealand.
6. On January 1, 2014, the claimant travelled to New Zealand to seek work through headhunters. The headhunters advised the claimant to travel to New Zealand to seek work in person.
7. The claimant was not seeking work in the United States.
8. The claimant was seeking work in New Zealand because of a greater chance of obtaining gainful employment in her field than in the United States.
9. In April 2014, the claimant secured permanent housing in New Zealand.
10. On April 15, 2014, the claimant returned to the United States to prepare to relocate to New Zealand.
11. The claimant stopped looking for work when she returned to the United States because she was preoccupied with relocating.
12. The last week the claimant certified her weekly unemployment benefits was for April 5, 2014.
13. During the weeks the claimant traveled to New Zealand, she electronically certified for her weekly unemployment benefits from New Zealand.
14. In May 2014, the claimant relocated from the United States to New Zealand.
15. The claimant was paid unemployment benefits during the weeks ending November 23, 2013 through March 29, 2014.
16. On May 14, 2014, the Department of Unemployment Assistance issued the claimant a Notice of Disqualification notifying the claimant she was not entitled to unemployment benefits under Section 24(b) of the Law for the period beginning January 5, 2014 through March 8, 2014.

## Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant has not met the filing and registration requirements of G.L. c. 151A, § 25(a), and for that reason we disagree that she is entitled to benefits for one bi-weekly certification.

Resolution of this case requires an analysis of G.L. c. 151A, § 25(a), which provides, in relevant part, as follows:

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

Regulations pertaining to filing and registration requirements are found at 430 CMR 4.01 and 4.05. “[A]n individual who has wage credits in Massachusetts but is *not residing* in Massachusetts, may register and file claims as provided for in 430 CMR 4.05, Interstate Claims.” 430 CMR 4.01(1) (emphasis added). The regulations at 430 CMR 4.05 allow for claims to be filed from another state, and include specific procedures for doing so. Claimants who move to another state must, for example, register in that venue's public employment office and file for benefits using uniform interstate claim forms and in accordance with the uniform procedures developed pursuant to the Interstate Benefit Payment Plan (IBPP). 430 CMR 4.05(2) and (4)(a). The regulations expressly extend these procedures to claims taken in or for Canada (430 CMR 4.05(7)) because the governments of the United States and Canada have signed a treaty providing for the reciprocal payment of unemployment benefits<sup>1</sup>.

The reason for limiting claims to those physically present in the United States or Canada is linked to DUA's ability to supervise claims, as required under federal law. *See Hall v. Dir. of Division of Unemployment Assistance*, No. 12-P-948, 2013 WL 757802 (Mass. App. Ct. Mar. 1, 2013), *summary decision pursuant to rule 1:28* (disqualifying a claimant, who returned to his permanent home in Jamaica after a one-year teaching appointment in Massachusetts, pursuant to G.L. c. 151A, § 25(a) and DUA policy). The unemployment system is highly structured and regulated. Under federal law, DUA must maintain an income and eligibility verification system so that it can verify continued eligibility for benefits and the amount of compensation payable to the claimant<sup>2</sup>. Employers are required to report wages to the state agencies that administer the unemployment program.<sup>3</sup> Those agencies must participate in the income and verification

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<sup>1</sup> Agreement Between the Government of Canada and the Government of the United States of America, Effective 1942, Amended 1951, available on the U.S. Department of Labor website at [http://www.workforcesecurity.doleta.gov/unemploy/pdf/agree\\_us\\_and\\_canada.pdf](http://www.workforcesecurity.doleta.gov/unemploy/pdf/agree_us_and_canada.pdf). This treaty expressly permits Canada to participate in the Interstate Benefit Payment Plan.

<sup>2</sup> *See* 42 U.S.C. § 1320b-7(a) and (b)(3).

<sup>3</sup> 42 U.S.C. § 1320b-7(a)(3).

system<sup>4</sup>, which provides for sharing of wage information between state agencies, the Internal Revenue Service (IRS) and the Social Security Administration (SSA)<sup>5</sup>. State agencies are further required to cross match quarterly wage information with unemployment benefit payments to the extent such information is likely to detect incorrect payments<sup>6</sup>.

Simply put, the DUA regulations promulgated pursuant to its authority under G.L. c. 151A, § 25(a), are specific as to how claimants may become eligible to collect unemployment benefits from outside of Massachusetts.<sup>7</sup> They do not extend to New Zealand. Because the claimant is disqualified pursuant to the registration and filing requirement of G.L. c. 151A, § 25(a), we need not reach the separate question as to whether the claimant was able, available, and actively seeking work either in New Zealand or the United States during the relevant period.<sup>8</sup>

We, therefore, conclude as a matter of law that the claimant did not meet the filing and certification requirements of G.L. c. 151A, § 25(a), when she certified for benefits electronically from New Zealand.

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<sup>4</sup> 42 U.S.C. § 1320b-7(b)(3).

<sup>5</sup> 42 U.S.C. § 1320b-7(a)(2).

<sup>6</sup> 20 C.F.R. § 603.23(b).

<sup>7</sup> To be sure, a claimant reading 430 CMR 4.01(5) in isolation might conclude that he may simply certify each week through the DUA's electronic UI On-line system from anywhere, without regard to other sections of the regulations. However, we believe the Legislature's use of the phrase "any week" in conjunction with complying with the commissioner's "registration and filing requirements" in G.L. c. 151A, § 25(a), directs otherwise. The language puts the claimant on notice that the "registration and filing requirements," pertain to any week in which he seeks benefits.

<sup>8</sup> In a prior decision, we embraced a DUA policy found in its Service Representatives Handbook (SRH) at § 1032(F), which attempts to accommodate "transient claimants" who are temporarily out of the country to look for work. BR-124756, p. 4 (Jan. 17, 2013) (claimant who permanently relocated to Ireland was disqualified pursuant to G.L. c. 151A, § 25(a)). We take this opportunity to state that we now believe SRH § 1032(F) to be immaterial to a G.L. c. 151A, § 25(a), analysis. SRH § 1032(F) is a policy for evaluating the reasonableness of a claimant's work search, under G.L. c. 151A, § 24(b), and specifically provides that a claimant's eligibility pursuant to G.L. c. 151A, § 25(a), must be resolved first. Our holding today does not affect the disqualification in BR-124756 — the claimant who certified from Ireland remains disqualified by G.L. c. 151A, § 25(a), but we clarify that he is disqualified regardless of whether his relocation to Ireland is transient or permanent.

The portion of the review examiner's decision that disqualified the claimant from receiving benefits for the weeks ending January 18, 2014, through April 12, 2014, is affirmed. The portion of the examiner's decision that awarded benefits for the weeks ending January 4, 2014, and January 11, 2014 is reversed<sup>9</sup>. The claimant is responsible for repaying benefits awarded for these weeks to the unemployment fund without interest. If the claimant's circumstances change such that she again resides in the United States, she should contact the DUA and request a new determination.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 7, 2015**



Paul T. Fitzgerald, Esq.  
Chairman



Judith M. Neumann, Esq.  
Member

Member Stephen M. Linsky, Esq. did not participate in this decision.

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

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)

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

AB/rh

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<sup>9</sup> We reject that portion of SRH § 1616(B), which allows for one courtesy claim to be filed while outside of the United States. We find nothing in G.L. c. 151A, § 25(a), or in the DUA regulations that permits this.