

0013 2477 48, et al. (Sept. 24, 2015) – A claimant living with her military spouse at a U.S. Military Base in Japan did not meet the registration and filing requirement of G.L. c. 151A, § 25(a), because she certified for benefits from Japan.

Board of Review
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Issue IDs: 0013 2477 48; 0014 0939 19
Claimant ID: 1360078

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals two hearing decisions [issued by two different] review examiners of the Department of Unemployment Assistance (DUA) to deny unemployment benefits. Both appeals have been consolidated into this decision because they involve the same party, same issues, and same underlying facts. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm both decisions.

The claimant separated from her prior employer in September, 2013, and filed a claim for unemployment benefits with the DUA, which was initially approved. In a determination issued on July 14, 2014 (Issue I.D. # 0013 2477 48), the claimant was disqualified for the period September 22, 2013, to March 29, 2014, pursuant to G.L. c. 151A, §§ 24(b) and 25(a), and she was required to return \$16,176.00 to the unemployment fund. Subsequently, in a determination issued on September 29, 2014 (Issue I.D. # 0014 0939 19), the claimant was disqualified for the single week May 11, 2014, to May 17, 2014, also pursuant to G.L. c. 151A, § 25(a), and required to return an additional \$674.00 to the unemployment fund. The claimant appealed both determinations to the DUA hearings department. Following separate hearings on the merits, both attended by the claimant, both review examiners affirmed the agency's determinations. In a decision rendered on December 4, 2014 (Issue I.D. # 0013 2477 48), the review examiner affirmed the denial of benefits for the period beginning September 22, 2013, to March 29, 2014. In a decision rendered on March 9, 2015 (Issue I.D. # 0014 0939 19), the review examiner affirmed the denial of benefits for the week of May 11, 2014, to May 17, 2014. The claimant sought review of both determinations and we accepted her applications for review.

Benefits were denied after the review examiners 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 in both cases, including the recorded testimony and evidence from the hearings, the review examiners' decisions, and the claimant's appeals.

The issue before the Board is whether the review examiners' conclusions that the claimant did not meet the filing and certification requirements of G.L. c. 151A, § 25(a), are supported by substantial and credible evidence and free from error of law, where the claimant certified electronically from Japan after relocating there pursuant to her spouse's military orders.

Findings of Fact

The review examiner's findings of fact and credibility assessments under Issue I.D. # 0013 2477 48 are set forth below in their entirety:

1. The claimant resided with her husband in [City], Rhode Island, while working for her former employer.
2. The claimant contacted the Department in October 2013 about filing a claim for unemployment benefits. At that time, the claimant's claim was predated to September 22, 2013.
3. When contacting the Department of Unemployment Assistance the claimant was in Okinawa, Japan with her husband. The claimant informed the DUA representative that she was residing out of the country. The DUA representative informed the claimant that she would need to provide an address within the United States for the purpose of receiving benefits.
4. The claimant provided the Department of Unemployment Assistance with her mother's address of [Address], NJ as her address of record.
5. The claimant's husband obtained military orders in September 2013 to report to Okinawa Japan for duty no later than October 1, 2013. The order was for a thirty-six month period. The orders further indicated that the claimant was authorized to travel as his spouse in connection with the order.
6. The claimant traveled out of the country with her husband on September 23, 2013.
7. The claimant arrived in Okinawa, Japan on September 24, 2013. The claimant and her husband reside [sic] there from September 24, 2013 to the current time.
8. The claimant is authorized to work in Japan.
9. The claimant certified to receive unemployment benefits for the week ending October 12, 2013 through August 2, 2014. The claimant received her full weekly unemployment benefit rate of \$674 each of those weeks, prior to a deduction for taxes.
10. On July 14, 2014 the claimant was issued a Notice of Disqualification indicating that she was disqualified in accordance with Section 24(b) & 25(a) of the Law, because "you traveled out of the country for a fixed period of time to look for work without establishing reasonable prospects for such work. Therefore, you did not meet the availability requirements of the Law. You were out of the county [sic] and not able for work from 09/23/2013 to

03/29/2014.” It further indicated that the claimant was overpaid benefits for the weeks ending October 26, 2013 through April 5, 2014 in an amount totaling \$16,176.00.

11. The claimant has obtained a job in Okinawa, Japan with the USO to begin on November 5, 201[4]. (The claimant will be paying taxes to the United States when working in that job.)

The review examiner findings of fact and credibility assessments under Issue I.D. # 0014 0939 19 are set forth below in their entirety:

1. The claimant’s husband is a marine. In September 2013, the U.S. Marine Corp posted him to Japan for three years. He was authorized by the military to have the claimant accompany him.
2. Had the claimant decided to remain in the United States while her husband was in Japan, she would not have been able to get health insurance through her husband.
3. The claimant left for her job on September 23, 2013. She has lived on the Marine Corps military base in Japan since that time, although she has returned to the United States on occasion.
4. U.S. military bases, no matter where they are located, are considered U.S. soil.
5. The claimant is not authorized to work in Japan; she is authorized to work only on base.
6. There are several U.S. military bases in Japan within 7 miles of where the claimant is living. There are 80,000 active military members and 20,000 dependents on these bases. There are a number of businesses or organizations that hire civilians, such as stores, the Red Cross, the USO, and hospitals. There are estimated to be 50-100 employers on the combined bases.
7. The claimant opened an unemployment claim having an effective date of September 22, 2013.
8. In April 2014, the claimant returned to the United States for a month because her mother was sick.
9. The Department of Unemployment Assistance (DUA) has the ability to track, through GPS, the location of a claimant when she accesses the DUA website. On April 17, 2014, April 21, 2014, April 22, 2014, April 28, 2014 and May 7, 2014 the claimant was in the United States.
10. On May 14, at 10:55 am, the claimant flew out of Newark to return to Japan.

11. On May 16, 2014, May 22, 2014, and later dates the claimant accessed her UI Online account from Asia.
12. During the week ending May 17, 2014, the claimant set up an interview with the Navy Relief Society, networked with people on base through e-mail, and reviewed the employment openings of the Marine Corps Community Services. The Marine Corps Community Services advertises the majority of jobs available on-base.
13. DUA paid the claimant benefits of \$674 for the week ending May 17, 2014.
14. On November 5, 2014 the claimant obtained a full-time position as a volunteer coordinator for the USO.
15. The claimant has maintained her Massachusetts residency and will be paying state income tax to Massachusetts on her current earnings.
16. There are several U.S. military bases in Japan within 7 miles of where the claimant is living. There are 80,000 active military members and 20,000 dependents on these bases. There are a number of businesses or organizations that hire civilians, such as stores, the Red Cross, the USO, and hospitals. There are estimated to be 50-100 employers on the combined bases.¹

Ruling of the Board

In accordance with our statutory obligation, we review the decisions made by the review examiners to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiners' ultimate conclusions are free from error of law. After such review, the Board adopts the findings of fact and credibility assessment in both cases, except as follows. We accept Review Examiner Ferullo's Finding of Fact # 8 to the extent that the claimant is authorized to work in Japan only on a U.S. military base. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we agree with both examiners' legal conclusion that the claimant has not met the filing and registration requirements of G.L. c. 151A, § 25(a) for the period September 22, 2013, to March 29, 2014, and for the single week May 11, 2014, to May 17, 2014.

A claimant's certification obligations derive from 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

¹ Finding of Fact # 16 duplicates Finding of Fact #6 in Examiner O'Neill's decision.

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, for example, must 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 benefits².

The reason for limiting claims to those physically present in the United States or Canada is linked to the 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, the 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 claimant³. Employers are required to report wages to the state agencies that administer the unemployment program.⁴ Those agencies must participate in the income and verification system⁵, which provides for sharing of wage information between state agencies, the Internal Revenue Service (IRS) and the Social Security Administration (SSA)⁶. 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 payments⁷.

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 Massachusetts.⁸ They do not allow for certifying from Japan.

The claimant has failed to otherwise establish that employers on the U.S. military bases in Japan are required to report wages to any of the state agencies that administer the unemployment program. Although the claimant has established that she will be paying state income tax to Massachusetts on the wages from her *new* employer, this merely makes wage information available to the DUA (through the Massachusetts Department of Revenue) should it need to

² 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. This treaty expressly permits Canada to participate in the Interstate Benefit Payment Plan.

³ *See* 42 U.S.C. § 1320b-7(a) and (b)(3).

⁴ 42 U.S.C. § 1320b-7(a)(3).

⁵ 42 U.S.C. § 1320b-7(b)(3).

⁶ 42 U.S.C. § 1320b-7(a)(2).

⁷ 20 C.F.R. § 603.23(b).

⁸ To be sure, a claimant reading 430 CMR 4.01(5) in isolation might conclude that they 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.

verify her wages on a future claim. There is no evidence that the employers on the U.S. military bases in Japan, who employ civilians like the claimant, are required to report wages to any of the state agencies that administer the unemployment program. Thus, there is no evidence that the DUA can verify her continued eligibility for benefits and the amount of compensation payable to her under the existing 2013 claim.

In her appeal, the claimant argues that she remains eligible for benefits because, *inter alia*, she has not relinquished her residency status in Massachusetts. She cites to the Servicemembers Civil Relief Act, 50 App. U.S.C. § 595(b). This provision states:

For the purposes of *voting* for any Federal office . . . or a State or local office, a person who is absent from a State because the person is accompanying the person's spouse who is absent from that same State in compliance with military or naval orders shall not, solely by reason of that absence –

- (1) be deemed to have lost a residence or domicile in that State, . . .
 - (2) be deemed to have acquired a residence or domicile in any other State; or
 - (3) be deemed to have become a resident in or a resident of any other State.
- (Emphasis added.)

It is apparent that this federal law pertains to voting rights, not a person's right to unemployment benefits. We are not aware of any military exception to the registration and filing requirements of G.L. c. 151A, § 25(a).

During the period from September 22, 2013, to March 29, 2014, while the claimant remained continuously in Japan and certified from Japan, she is disqualified, pursuant to the registration and filing requirement of G.L. c. 151A, § 25(a). During the single week of May 11 to 17, 2014, because the claimant was out of the country for more than 3 days during that week and certified from Japan, she is also disqualified, pursuant to the same provision of law. Since she is disqualified under 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 on a U.S. military installation during this period.⁹

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

⁹ 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 review examiners' decisions in Issue I.D. # 0013 2477 48 and Issue I.D. # 0014 0939 19 are affirmed. The claimant is denied benefits for the period beginning September 22, 2013, through March 29, 2014¹⁰, and during the single week of May 11, 2014 to May 17, 2014. The claimant is responsible for repaying benefits in the amount of \$16,850.00 to the unemployment fund.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 24, 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 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

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

¹⁰ 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.