

0015 1720 09 (Dec. 22, 2015) – A claimant who is in the United States during the majority (at least 4 days) of any week in which he traveled to and certified from a foreign country other than Canada, is entitled to benefits under G.L. c. 151A, § 25(a), if otherwise eligible.

Board of Review
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Issue ID: 0015 1720 09
Claimant ID: 1461243

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, and reverse.

The DUA's electronic record-keeping system, UI Online, indicates that the claimant filed a claim for benefits on March 19, 2013. On January 21, 2015, the DUA issued a Notice of Disqualification indicating that, pursuant to G.L. c. 151A, § 24(b), the claimant was ineligible for benefits between the weeks ending June 29, 2013 and September 14, 2013. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's initial determination to deny benefits, but he did so under G.L. c. 151A, § 25(a), and he modified the disqualification dates to the weeks ending June 29, 2013, and July 6, 2013. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to meet the filing and registration requirements, under G.L. c. 151A, § 25(a), and, thus, was disqualified. 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 on appeal is whether the review examiner's conclusion that the claimant failed to meet the filing and registration requirements, under G.L. c. 151A, § 25(a), is supported by substantial and credible evidence and is free from error of law, where the findings indicate that the claimant was in the United States during the majority of each of the two weeks at issue.

Findings of Fact

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

1. The claimant filed a claim for unemployment insurance benefits with the Department of Unemployment Assistance (“DUA”) during the week ending February 23, 2013, with the claim being made effective as of that same week.
2. After filing, the DUA issued the claimant a pamphlet containing information on the requirements for receiving unemployment benefits, which the claimant received and read.
3. Sometime after he opened his claim, the claimant learned that his mother, who lived in Germany, had passed away.
4. The claimant then planned a trip to Germany to attend to his mother’s affairs and funeral in the wake of her passing.
5. The claimant flew by plane to Germany on June 28, 2013.
6. The claimant did not inform the DUA that he was going to leave the country or why he was doing so in advance.
7. The claimant is a citizen of Germany and is authorized to work there.
8. The claimant had no job-related interviews, meetings, or other appointments set up in Germany prior to leaving the United States.
9. The claimant did not seek work at any time while abroad.
10. The claimant continued to log in and sign for his weekly benefits while abroad in Germany.
11. The claimant flew back to the United States on July 2, 2013.
12. The claimant did not leave the United States again while continuing his claim through the end of December 2013.
13. The DUA received a phone call to its fraud hotline saying the claimant had in fact remained abroad until September 2013.
14. On January 21, 2015, the DUA issued the claimant a “Notice of Disqualification” stating that he was not entitled to receive benefits for the weeks ending June 29 through September 14, 2013, due to being abroad during each of those weeks.

Ruling of the Board

In accordance with our statutory obligation, we review the examiner’s decision to determine: (1) whether the findings of fact are supported by substantial and credible evidence; and (2) whether the ultimate conclusion that the claimant is not entitled to benefits is free from error of law.

Upon such review and as discussed more fully below, the Board adopts the review examiner's findings of fact. In adopting these findings, we deem them to be supported by substantial and credible evidence. However, we conclude that the findings support an award of benefits to the claimant.

On the issue before us, the claimant's eligibility for benefits is governed by 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. The commissioner shall furnish copies of such requirements to each employer, who shall notify his employees of the terms thereof when they become unemployed.

The United States does not have a reciprocal agreement on the payment of benefits with any foreign country except Canada. *See* 430 CMR 4.00; DUA Service Representatives Handbook § 1616 (B). As a result, a claimant is not allowed to file benefit certifications for periods in which he was outside of the United States, its territories or possessions, or Canada, because the DUA would not be able to fulfill its federal law obligations to monitor the claimant's work activity, earnings, etc.¹ *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). However, that purpose and policy is not implicated where the claimant merely submitted his certifications from such foreign locations but was actually in the United States during the weeks covered by such certifications.

Here, the claimant traveled to Germany on June 28, 2013, due to the passing of his mother, and he returned to the United States on July 2, 2013. The review examiner concluded that, because the United States does not have a reciprocal agreement on the payment of benefits with Germany, the claimant failed, without good cause, to meet the filing and registration requirements, under G.L. c. 151A, § 25(a), during the two weeks at issue. Since the claimant was in the United States for the majority of the two weeks at issue — five complete days during the week ending June 29, 2013 and four complete days during the week ending July 6, 2013 — he is not disqualified, under G.L. c. 151A, § 25(a), for those weeks.

¹ *See* 42 U.S.C. § 1320b-7(a) and (b); and 20 C.F.R. § 603.23(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the weeks ending June 29, 2013 and July 6, 2013, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 22, 2015



Judith M. Neumann, Esq.
Member

Member Charlene A. Stawicki, 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

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.

SVL/rh