

0015 7819 25 (Nov. 5, 2015) – The claimant does not have to comply with the REA seminar requirements while she is in a section 30 approved training program because section 30 approval results in a waiver of the work search requirement.

Board of Review
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Issue ID: 0015 7819 25
Claimant ID: 10340652

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 claimant filed a claim for benefits on January 7, 2015. After the claimant filed her claim, the DUA issued a notice informing her that she was required to attend a Reemployment and Eligibility Assessment (REA) seminar and review meeting. On March 14, 2015, the DUA issued a Notice of Disqualification, under G.L. c. 151A, § 25(a), indicating that the claimant was indefinitely ineligible for benefits as of the week ending March 7, 2015, because she failed to attend the scheduled REA meeting. 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 and denied benefits in a decision rendered on May 1, 2015. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to attend an REA review meeting without good cause and, thus, was disqualified, 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 on appeal is whether the review examiner's conclusion that the claimant failed to attend an REA review meeting without good cause, under G.L. c. 151A, § 25(a), is supported by substantial and credible evidence and is free from error of law, where the DUA's records show that the claimant's training benefits, under G.L. c. 151A, § 30(c), were approved for the period of February 17, 2015 through August 15, 2015.

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 January 10, 2015, with the claim being made effective as of that same week.
2. After her filing, the DUA issued the claimant a letter (“Letter”) informing her that she needed to attend a one-on-one career review session (“Review”) at a state-run career center (“Center”) as part of the multistate Reemployment Eligibility Assessment (“REA”) program.
3. At the time the DUA sent her the Letter, the claimant was involved in a full-time training program and had already applied for additional training benefits from the DUA, a request that was still pending.
4. The Letter gave a deadline for the claimant to attend and complete the Review of [sic] the end of the week ending March 7, 2015.
5. The claimant did not receive the Letter until approximately mid-March 2015, after the deadline had already gone by, so she did not attend and complete the Review by the March 7, 2015 deadline.
6. The claimant then called the Center and spoke to a career specialist there (“Specialist”), telling the Specialist that she was in a training program full-time and therefore was finding it difficult to make time to attend the Seminar.
7. The Specialist told the claimant to wait and see if her training benefits were approved and that she only had to do the Seminar once they were denied, making a note in her account with the Center that she was in full-time “approved” training.
8. As the claimant’s training had not yet been deemed eligible by the DUA for additional benefits, it had not been “approved,” meaning the Specialist’s comments and note were each incorrect.
9. The following week, the claimant was disqualified from her weekly benefits and called the DUA to find out why.
10. On March 12, 2015, the claimant spoke to a DUA staff person, who informed the claimant that the denial was due to her not having attended the Review and still needing to do so.
11. The claimant told the staff person of the Specialist’s note that she did not have to go unless her training benefits were denied, which the staff person told the claimant was incorrect information, meaning the claimant was in fact obligated to attend and complete the Review.
12. Nothing was preventing or hindering the claimant from completing the Review once she was informed she still needed to do so.

13. On March 14, 2015, the DUA issued the claimant a “Notice of Disqualification” stating that the claimant was not eligible for benefits for the week ending March 7, 2015 and thereafter “until the week that the claimant attends and meets the requirements” of the Review.

14. As of April 7, 2015, the claimant has still not re-scheduled, attended, and completed the Review at any time.

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 except as follows. We supplement Finding # 8 with information from the DUA’s UI Online system indicating that, on August 4, 2015, the DUA approved the claimant’s G.L. c. 151A, § 30(c), training benefits for the period of February 17, 2015, through August 18, 2015. *See* Issue ID 0015 7149 44. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we believe these findings as supplemented do not sustain the review examiner’s decision to disqualify the claimant.

In the instant matter, the relevant statutory provision is 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.

We take administrative notice that the DUA determined that the claimant is eligible for unemployment training benefits, under G.L. c. 151A, § 30(c). *See* Issue ID 0015 7149 44. Since the purpose of the reemployment assistance program (REA) is to provide claimants with job search assistance services, but approval for training benefits, under G.L. c. 151A, § 30(c), results in a waiver of the work-search requirements, we conclude that the claimant was not required to comply with the REA requirements while she was enrolled in an approved training program. *See* 430 CMR 4.01(8)(a); 430 CMR 9.01. Thus, the claimant cannot be disqualified from receiving benefits under G.L. c. 151A, § 25(a) during the period for which she has been approved under G.L. c. 151A, § 30(c).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the weeks ending March 7, 2015 through August 22, 2015, and subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 5, 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

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