

Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member

Issue ID: 0013 2510 25

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Rachel Zwetchkenbaum, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant benefits for the period from September 8, 2013 through December 7, 2013. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part the review examiner's decision.

On May 16, 2014, the agency initially determined that the claimant was not entitled to unemployment benefits for the period from September 8, 2013 through December 7, 2013. As a result, the claimant was determined to have been overpaid unemployment benefits for those weeks. The claimant appealed¹ and attended the hearing. In a decision rendered on September 19, 2017, the review examiner affirmed the agency determination, concluding that the claimant was not physically present in the United States for the period at issue and, thus, was disqualified from receiving benefits under G.L. c. 151A, § 25(a), and 430 CMR 4.01(1). The Board accepts the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's findings of fact are supported by substantial and credible evidence in the record, except for the country noted in Finding of Fact # 5. It appears that the finding contains a typographical error. The record and the other findings make clear that the claimant certified for benefits for a period of time when he was in Lebanon, not Ethiopia. As to the review examiner's ultimate conclusion that the claimant is subject to disqualification from September 8, 2013, through December 7, 2013, we disagree in part.

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.² 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

¹ The claimant appealed the May 16, 2014 determination in 2017. Clearly, this was late. However, the agency allowed the claimant's late appeal, and a hearing was scheduled on the merits.

² See 42 U.S.C. § 1320b-7(a) and (b); and 20 C.F.R. § 603.23(b).

Massachusetts, pursuant to G.L. c. 151A, § 25(a), and DUA policy). However, that purpose and policy is not implicated where the claimant submitted certifications from such foreign locations but was actually in the United States during the majority of time during the weeks covered by such certifications. *See* Board of Review Decision 0015 1720 09 (December 22, 2015).³ Here, the agency's records show that the claimant certified for benefits for the week of September 8, 2013, while he was in Lebanon. However, he was physically present in the United States for the vast majority of the week beginning September 8, 2013. Therefore, pursuant to our prior case law, the claimant cannot be denied benefits under G.L. c. 151A, § 25(a) for the week of September 8, 2013.

The review examiner's decision is affirmed in part and reversed in part. The claimant is eligible to receive benefits for the week beginning September 8, 2013. The claimant is disqualified from receiving benefits from September 15, 2013, through December 7, 2013, because he was not physically present in the United States during that period of time.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 18, 2017



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**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.

SF/rh

³ Board of Review Decision 0015 1720 09 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.