

Claimant, who travelled to London from Thursday through Tuesday, was present in the United States for a majority of each week and therefore not disqualified under G.L. c. 151A, § 25(a).

**Board of Review
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Issue ID: 0019 5175 54

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Danielle Etienne, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits for the week ending August 6, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with the DUA, which was determined to be effective June 26, 2016. He then certified for benefits on that claim. On August 24, 2016, the DUA issued a Notice of Disqualification, informing the claimant that he was subject to lost time charges for the weeks ending August 6 and August 13, 2016. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, in a decision rendered on October 26, 2015, the review examiner modified the agency's initial determination and denied benefits for the week ending August 6, 2016. 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 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 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 claimant certified for benefits while he was outside of the United States during the period of August 4, 2016, through August 9, 2016.

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 with an effective date of March 20, 2016.

2. From August 4, 2016 through August 9, 2016, the claimant travelled to London, England to visit his daughter.
3. On August 7, 2016 the claimant filed his weekly claim for the week ending August 6, 2016 for benefits while he was in London.
4. The claimant was not aware that he could not file [his] weekly claim for benefits while in England.
5. The United States has a reciprocal unemployment agreement with only the Government of Canada.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact and credibility assessment, except as follows. Finding of Fact # 1 states that the claimant's unemployment claim was effective March 20, 2016. In reality, DUA records indicate that the effective date of the claim is June 26, 2016; the March 20, 2016, date is not reflected anywhere in the record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant failed to meet the filing and registration requirements, under G.L. c. 151A, § 25(a), due to his presence in London for parts of two weeks.

The issue before us arises under 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 governing the exchange of information relevant to the payment of unemployment benefits with any foreign country except Canada. *See* 430 CMR 4.05(7); 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

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

G.L. c. 151A, § 25(a), and DUA policy). However, that purpose and policy is not implicated where the claimant submitted his 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).²

Here, the claimant left for London on Thursday, August 4, 2016, and returned on Tuesday, August 9, 2016. The review examiner concluded that, because the United States does not have a reciprocal agreement on the payment of benefits with England or the United Kingdom, the claimant failed without good cause to meet the filing and registration requirements of 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 — four complete days during the week ending August 6, 2016, and four complete days during the week ending August 13, 2016 — he is not disqualified, under G.L. c. 151A, § 25(a), for those weeks.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the weeks ending August 6, 2016, and August 13, 2016, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – January 31, 2017



Judith M. Neumann, Esq.
Member



Charlene A. Stawicki, Esq.
Member

Chairman Paul T. Fitzgerald, 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

² Board of Review Decision 0015 1720 09 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

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.

JRK/rh