

A claimant who certified for benefits while in the Dominican Republic for a few days is not disqualified under G.L. c. 151A, § 25(a), because she was physically present in the United States for the majority of the weeks in question. It was not appropriate to impose a lost time charge penalty because the claimant was not in partial unemployment and did not turn down work.

**Board of Review
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Issue ID: 0022 3534 14

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by J. Cofer, a review examiner of the Department of Unemployment Assistance (DUA), to reduce the payment of unemployment benefits during two weeks of her claim. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant separated from employment and became eligible for benefits, effective May 28, 2017. In a determination issued on July 22, 2017, the DUA issued a Notice of Disqualification, imposing a lost time penalty against the payment of benefits in the amount of \$530.88 for the two weeks beginning June 25, 2017. 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 in a decision rendered on September 1, 2017. We accepted the claimant's application for review.

The claimant's benefit payments were reduced after the review examiner determined that the claimant had failed to comply with the DUA's filing and registration requirements, as required 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 before the Board is whether the review examiner's conclusion, that the claimant's weekly benefit amount is subject to a lost time penalty for two weeks because she was outside the country for part of each week, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The effective date of the claim is 5/28/17. The claimant's weekly benefit amount is \$553.00.
2. The claimant travelled to the Dominican Republic. She was there from 6/30/17 through 7/04/17. The claimant travelled to the Dominican Republic to attend her daughter's wedding there.
3. The claimant certified for benefits for the weeks 6/25/17 to 7/01/17 and 7/02/17 to 7/08/17.
4. In the periods 6/25/17 to 6/29/17 and 7/05/17 to 7/08/17, nothing rendered the claimant unavailable for full-time work.
5. Since 5/28/17, nothing has rendered the claimant incapable of full-time work.
6. Since 5/28/17, the claimant has searched for full-time employment. She has searched for employment on at least three days in each week. She has sought employment that she is qualified for.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems 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's weekly benefits are subject to a lost time charge.

The review examiner based his decision upon two sections of the unemployment statute. G.L. c. 151A, § 24(b), provides, in pertinent part, as follows:

[An individual, in order to be eligible for benefits under this chapter, shall] . . . (b) Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted

G.L. c. 151A, § 25(a), 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.

In his decision, the review examiner concluded that the claimant met the requirement to be able, available, and actively seeking work, as required by G.L. c. 151A, § 24(b). The findings of fact support his conclusion, and we agree with this portion of the review examiner's decision.

However, we do not agree that the claimant is subject to a lost time charge against the payment of benefits during the two weeks in question, the weeks beginning June 25, 2017, and July 2, 2017, pursuant to G.L. c. 151A, § 25(a).

The United States does not have a reciprocal agreement on the payment of unemployment benefits with any foreign country except Canada.¹ As a result, a claimant is not allowed to file benefit certifications for periods in which the claimant was outside 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 Massachusetts, pursuant to G.L. c. 151A, § 25(a), and DUA policy). However, we have held that a claimant does not interfere with the DUA's federal law obligations if she merely certifies from a foreign country but is physically present in the United States for a majority of the week. See Board of Review Decision 0015 1720 09 (Dec. 22, 2015) (claimant who was in the United States during a least four 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)).

In the present case, the findings show that the claimant left the United States on a Friday and returned the following Tuesday. As such, she was in this country for at least four complete days each week, or the majority of both weeks. Therefore, we conclude as a matter of law that she is not disqualified during either the week, beginning June 25, 2017, or July 2, 2017, under G.L. c. 151A, § 25(a).

We further conclude as a matter of law that the claimant is not subject to any lost time charges for those weeks. The DUA's authority to impose a lost time charge under 430 CMR 4.04(6), derives from the statutory provision for partial unemployment, G.L. c. 151A, § 1(r)(1). Under the latter provision, lost time charges only apply to claimants in partial unemployment who have actually turned down available work. The claimant in the present case was not in partial unemployment and there is no evidence that she turned down work during the two weeks at issue.

¹ See 430 CMR 4.01(1) and 4.05; see also DUA Service Representative Handbook § 1616(B).

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

The review examiner's decision is affirmed in part and reversed in part. The portion of the review examiner's decision, which concluded that the claimant met the requirements of G.L. c. 151A, § 24(b), is affirmed. The portion of the review examiner's decision, which imposed a lost time charge penalty of \$531.00 against the payment of benefits for two weeks pursuant to G.L. c. 151A, § 25(a), is reversed. The claimant is entitled to receive her full weekly benefits for the weeks beginning June 25, 2017 and July 2, 2017, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 22, 2017



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

**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.

AB/rh