

A claimant is not disqualified pursuant to G.L. c. 151A, § 25(a), for failing to certify for benefits for the three weeks prior to the reopening of his claim, where the DUA's UI Online computer system did not allow him to certify for those three weeks.

**Board of Review
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Issue ID: 0023 4469 28

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 for the period from August 27, 2017, through September 16, 2017. 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, and the claim was determined to be effective August 27, 2017. On August 2, 2018, the DUA issued a Notice of Disqualification for the period from August 27, 2017, through September 16, 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 and denied benefits for the three-week period at issue in a decision rendered on September 14, 2018.

Benefits were denied after the review examiner determined that the claimant did not have good cause for failing to timely certify for benefits for the period from August 27, 2017, through September 16, 2017, and, thus, he was disqualified under G.L. c. 151A, § 25(a). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the claimant's application for review and remanded the case to the review examiner to make subsidiary findings of fact from the record regarding the reasons why the claimant did not certify for benefits sooner. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not have good cause for failing to certify for benefits in a timely manner is supported by substantial and credible evidence and is free from error of law, where the DUA's UI Online computer system did not allow the claimant the opportunity to certify for benefits for the three weeks at issue.

Findings of Fact

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

1. The claimant filed a claim for unemployment insurance benefits. The effective date of the claim is 8/27/17.
2. The claimant's UI Online homepage features links to information about how to certify for benefits. The homepage features a link to the DUA's "Guide to Benefits and Employment Services for Claimants." The guide describes how to certify for benefits in a timely manner.
3. The DUA created a severance pay issue (Issue Identification Number 0022 8338 94-01). The DUA investigated the claimant's eligibility on this issue.
4. On 9/16/17, the DUA notified the claimant that it had approved him to receive benefits under Issue Identification Number 0022 8338 94-01.
5. The claimant reopened his claim on 9/22/17 in the UI Online system. The claimant found that the weeks 8/27/17 to 9/02/17, 9/03/17 to 9/09/17, and 9/10/17 to 9/16/17 were not available for certification in the UI Online system. The claimant surmised that he was not eligible for benefits for those weeks because the DUA made its approval decision on 9/16/17.
6. The claimant did not attempt to certify for benefits before 9/22/17 because he waited for the DUA to determine his eligibility under Issue Identification Number 0022 8338 94-01.
7. On 9/27/17, the claimant certified for benefits for the week 9/17/17 to 9/23/17.
8. The claimant met with some former coworkers on 10/28/17 or 10/29/17. These workers were laid off around the same time when the claimant was laid off. One of the former coworkers asked the claimant about how long he had been claiming benefits. The claimant explained that he first certified for benefits for the week 9/17/17 to 9/23/17. The coworker informed the claimant that he should have certified for the prior weeks.
9. On 10/31/17, the claimant spoke with a DUA representative. The DUA representative told the claimant that he could certify for benefits for the weeks in the period 8/27/17 to 9/16/17. On that same day, the claimant certified for benefits for those three weeks. In the timeframe between 9/22/17 and 10/31/17, the claimant did not attempt to certify for benefits for the weeks 8/27/17 to 9/02/17, 9/03/17 to 9/09/17, and 9/10/17 to 9/16/17 because the UI online system did not allow him to certify for benefits for those weeks.

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 conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we reject the review examiner's conclusion that the claimant is not eligible for benefits, under G.L. c. 151A, § 25(a), for the three weeks from August 27, 2017, through September 16, 2017.

The review examiner found that after the claimant established his claim for benefits, he did not certify for benefits on a weekly basis. He waited to certify until after an issue regarding severance pay was resolved by the DUA on September 16, 2017. The claimant re-opened his claim on September 22, 2017, and thereafter began certifying for benefits. As of September 22, 2017, he was unable to certify for any weeks prior to the week beginning September 17, 2017, including the period from August 27, 2017 through September 16, 2017.

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.

One of the filing requirements is that a claimant must submit a certification for each week he is requesting benefits. This requirement, including the time allowed for submitting the certification, is further explained in the DUA's regulations, at 430 CMR 4.01(5)(d), which provides, in relevant part, as follows:

The claimant's benefit certification form . . . must be postmarked no earlier than the Saturday of the last week of the bi-weekly reporting period for which benefits are claimed and no later than 21 days after the Saturday of the last week of the bi-weekly reporting period.

We note that certain language from the regulation is outdated. Currently, most claimants certify for benefits online each week. Thus, the postmark and "bi-weekly reporting period" language is antiquated. However, the underlying requirements are the same. A claimant is given twenty-one days to request a week of benefits. *See also* DUA Service Representative Handbook Section 1612(A). Only if the claimant does not request the week within the twenty-one days does an issue arise as to whether there was good cause for a late certification.

With this understanding of the law, we conclude that no good cause analysis was needed in this case. When the claimant re-opened his claim on September 22, 2017, he still should have been able to certify for benefits for the weeks beginning August 27, 2017, September 3, 2017, and September 10, 2017. Even the earliest week was still within the twenty-one-day certification

period.¹ The review examiner found that, on the DUA's UI Online computer system, the three weeks at issue were not available for certification. This was an error on the part of the DUA.

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits for the period from August 27, 2017, through September 16, 2017, pursuant to G.L. c. 151A, § 25(a), is not supported by substantial and credible evidence or free from error of law, because the claimant was improperly denied the opportunity to timely certify for benefits for those weeks.

The review examiner's decision is reversed. The claimant is not disqualified from receiving benefits, pursuant to G.L. c. 151A, § 25(a), for the period August 27, 2017, through September 16, 2017. He may receive benefits for those weeks, so long he is otherwise eligible under Chapter 151A.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 24, 2018



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

SF/rh

¹ Per the regulation, the certification must be returned "no later than 21 days after the Saturday" of the end of the reporting period. In this case, the first reporting period was the week August 27 through September 2, 2017. The Saturday was September 2, 2017. Twenty-one days after that was September 23, 2017.