

The claimant had good cause for her failure to attend a RESEA orientation seminar by the deadline, where the claimant was unable to open the electronic RESEA notification letter due to technological issues and promptly attempted to contact DUA to resolve the problem.

**Board of Review
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Issue ID: 0023 4912 20

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 one week. 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, effective September 24, 2017. On November 6, 2017, the DUA issued a Notice of Disqualification indicating that the claimant was ineligible for benefits for the week ending November 4, 2017, because she had failed to attend a required Reemployment Services and Eligibility Assessment (RESEA) orientation seminar. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant via telephone, the review examiner affirmed the agency's initial determination in a decision rendered on December 5, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to establish a good cause reason for her failure to attend a RESEA orientation seminar by the deadline, and therefore 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 before the Board is whether the review examiner's conclusion that the claimant did not have good cause for her failure to attend a RESEA orientation seminar by the deadline under G.L. c. 151A, § 25(a), is supported by substantial and credible evidence and is free from error of law, where the claimant was unable to open the electronic correspondence informing her of the RESEA requirements and attempted to contact DUA to resolve this problem.

Findings of Fact

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

1. On September 25, 2017, the claimant filed a claim for unemployment benefits with an effective date of September 24, 2017.
2. The claimant requested to receive correspondence electronically from the Department of Unemployment Assistance (DUA) and via U.S. Mail.
3. On October 16, 2017, the Department of Unemployment Assistance issued the claimant a Notice of her requirement to complete a Reemployment Services and Eligibility Assessment Program (RESEA). The Notice notified the claimant she was required to complete a RESEA Seminar no later than November 3, 2017.
4. The Notice was sent to [Address A] and sent electronically to the claimant's UI online inbox.
5. The claimant has not received any correspondence from the DUA via U.S. Mail.
6. On or about October 16, 2017, the claimant received the Notice via her UI online inbox, but was unable to open it on her phone, computer or iPad.
7. On or about October 16, 2017, the claimant attempted to call the DUA, but did not get through.
8. On or about October 17, 2017, the claimant called the Governor's office to get assistance with the DUA.
9. Sometime after October 17, 2017, A DUA representative called the claimant per request from the Governor's office and attempted to assist the claimant with opening the Notice.
10. On November 3, 2017, the claimant opened the Notice from her IPAD.
11. On November 3, 2017, the claimant called the [City A] career center and scheduled a RESEA seminar for November 8, 2017 at the [City B] career center.
12. The claimant did not attend a RESEA career center seminar by November 3, 2017.
13. On November 6, 2017, the DUA issued the claimant a Notice of Disqualification under section 25(a) of the Law for the week beginning October 29, 2017.
14. On November 8, 2017, the claimant attended the RESEA seminar at the [City B] career center.

Ruling of the Board

In accordance with our statutory obligation, we review the review examiner's decision to determine: (1) whether the findings of fact are supported by substantial and credible evidence; and (2) whether the original conclusion that the claimant is not entitled to benefits is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. Finding of Fact # 2 states that the claimant requested to receive DUA correspondence both electronically and via postal mail, while Finding of Fact # 4 states that DUA mailed a RESEA letter to the claimant's home address. In reality, DUA does not allow claimants to elect to receive correspondence *both* electronically and via postal mail, and DUA records show that the claimant elected to receive correspondence electronically. This is consistent with Finding of Fact # 5, which states that the claimant never received any postal correspondence from DUA. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we conclude that the findings support an award of benefits to the claimant.

The claimant was denied benefits for failing to attend a RESEA orientation seminar, which is a registration and filing requirement of DUA. Consequently her eligibility for benefits is governed by 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.

Also at issue are the DUA regulations pertaining to mandatory participation in RESEA services. These are found at 430 CMR 4.01(8), which provides, in pertinent part:

(a) Any individual who has been identified pursuant to a profiling system established by the Commissioner as likely to exhaust regular benefits and in need of job search assistance services to make a successful transition to new employment shall not be eligible for benefits for any week such individual fails without good cause to attend and participate in a reemployment services seminar or such follow-up review sessions as directed by the Commissioner.

(b) For the purposes of 430 CMR 4.01(8)(a), the term "good cause" shall mean:

1. attendance at a job interview;
2. claimant, household member or immediate family member illness;
3. emergency family care issue, provided, that attempts to secure family care for the scheduled activity have been made;
4. unexpected transportation problems;
5. previously scheduled health-related appointments;
6. jury duty;
7. death of a household member or immediate family member (including a spouse, child, parent, brother, sister, grandparent, stepchild, or parent of a spouse);
8. the individual's need to address the physical, psychological and legal effects of domestic violence as defined in M.G.L. c. 151A, § 1(g^{1/2}); and

9. other circumstances which the Commissioner determines are beyond the individual's control; and

(c) An individual who fails to attend a reemployment services seminar or review session (either for good cause or otherwise) shall attend a rescheduled seminar or review session as directed by the Commissioner.

(d) A claimant who has been determined to have good cause for failing to attend a reemployment services seminar or review session shall be eligible for benefits, provided, that the claimant is otherwise eligible for benefits under the other provisions of M.G.L. c. 151A.

Here, the claimant was electronically issued a letter dated October 16, 2017, instructing her to attend an initial RESEA orientation seminar by November 3, 2017. The claimant actually attended the program on November 8, 2017, five days late. The question is whether the claimant had a good cause reason for her failure to meet the deadline.

The review examiner found that the claimant's delay in attending the seminar was due to her inability to open the October 16, 2017, RESEA letter. Without having read this letter, a claimant would not ordinarily know about the RESEA program or her obligation to attend the orientation seminar. Notably, upon being unable to open the electronic document, the claimant did not simply abandon her attempts, but rather, made diligent, though unsuccessful, efforts by trying to access the document on three different devices, and by promptly attempting to contact DUA on numerous occasions to resolve the problem. These are "circumstances . . . beyond the individual's control" and amount to good cause under 430 CMR 4.01(8)(b)(9).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending November 4, 2017, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 30, 2018



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.

JRK/rh