

**A career center representative deemed the claimant to have not met the RESEA review requirements solely because he did not possess work search logs for two specific weeks. Because the claimant did not seek work and is not seeking unemployment benefits for those weeks, he had good cause for his failure to provide the requested work search logs.**

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

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: 0023 7404 95**

## **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. 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 3, 2017. On November 27, 2017, the DUA issued a Notice of Disqualification providing that the claimant was ineligible for benefits beginning November 19, 2017, and indefinitely thereafter, until he completed an Unemployment Insurance Reemployment Services and Eligibility Assessment (RESEA) review process. The claimant appealed the determination to the DUA hearings department. Following a hearings on the merits conducted via telephone, the review examiner affirmed the agency's initial determination in a decision rendered on May 2, 2018. We accept the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to demonstrate that he completed the RESEA review requirements without a showing of good cause 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 before the Board is whether the review examiner's decision, which concluded that the claimant did not complete the RESEA review requirements under G.L. c. 151A, § 25(a), is supported by substantial and credible evidence and is free from error of law, where the career center initially did not certify the claimant as having attended the program because he could not produce work search logs for weeks in which he did not search for work.

### **Findings of Fact**

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

1. The claimant filed an unemployment claim on 9/7/17 and was eligible to receive regular unemployment benefits.
2. The claimant indicated on his initial claim application that he wanted to receive all correspondence by US mail.
3. The claimant was sent notification on 11/11/17 of the Reemployment Eligibility Assessment requirements (RESEA) that he needed to meet to maintain his eligibility for benefits.
4. The claimant received the notification; he read it and understood it.
5. The claimant attended the review on 11/22/17 but failed to meet the requirements. He presented the Representative with his work searches but they were not complete.
6. The claimant was sanctioned for not meeting the RESEA Review requirements on 11/24/17.
7. On 11/27/17, the DUA issued a disqualification notice which denied benefits to the claimant for the weeks beginning 11/19/17 and indefinitely thereafter.
8. The claimant filed an appeal of the 11/27/17 disqualification.
9. The claimant has not met the review requirements to date.

#### 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 # 5 states that the claimant attended the RESEA review meeting on November 22, 2017. In fact, DUA and Department of Career Services (DCS) records indicate that this occurred on November 21, 2017, and that the several follow-up phone calls occurred on November 22, 2017. 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 record before us supports an award of benefits to the claimant.

The claimant was denied benefits for failing to complete his RESEA review, which is a certification requirement of DUA. Consequently, his 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<sup>1/2</sup>); 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 issued a letter on or about November 11, 2017, informing him of the requirement to attend a RESEA review meeting by December 15, 2017. It is undisputed that, prior to this deadline, the claimant attended a RESEA review at a career center, but was deemed by the career center representative not to have met all of the requirements of the review. The question is whether the claimant in fact completed the RESEA review requirements, and if he did not, whether he had a good cause reason for his failure to do so.

Notes from the career center representative, entered into the record as Exhibit # 7, indicate that the claimant was not certified as having completed the RESEA review because he failed to provide requested work search logs for the weeks ending October 14, 2017, October 28, 2017, and November 11, 2017. The notes also indicate that, on December 11, 2017, prior to his December

15, 2017, deadline to complete the RESEA program, the claimant returned to the career center and provided his work search logs for the week ending November 11, 2017, but never provided work search logs for the other two weeks. The claimant testified that he could not provide the logs for the weeks ending October 14, 2017, and October 28, 2017, because he in fact did not look for work those weeks.

DUA records indicate that, in a separate disqualification, the claimant was denied benefits for the week ending October 14, 2017, pursuant to G.L. c. 151A, § 24(b), because he did not search for work that week. As of today's date, the claimant has not appealed that disqualification. DUA records also show that the claimant never requested benefits for the week ending October 28, 2017. It is not reasonable to require the claimant to provide work search logs for weeks that he did not search for work and that the claimant is not seeking to obtain benefits. These circumstances constitute good cause for the claimant's failure to produce these requested work search logs.

Notably, DCS records show that, on the same day as the hearing in this case, the claimant again contacted his career center representative. Despite not providing any additional work search logs, the career center representative certified the claimant as having completed the RESEA review requirements because the claimant was not seeking benefits for the weeks in question.

The review examiner's decision is reversed. The claimant is entitled to receive benefits beginning November 19, 2017, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 30, 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](http://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