

**The claimant had good cause for failing to timely certify for benefits, where the claimant was given misinformation by a DUA representative about his eligibility and was not initially informed about the weekly certification requirement.**

**Board of Review  
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**Issue ID: 0023 8978 37**

## **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. Benefits were denied on the ground that the claimant failed to comply with the filing and registration requirements pursuant to G.L. c. 151A, § 25(a) by failing to certify for benefits for a number of weeks.

The claimant had filed a claim for unemployment benefits effective August 13, 2017. The claimant did not file weekly certifications to request unemployment benefits for the next 16 weeks. On December 6, 2017, the claimant re-opened his unemployment claim and requested benefits for all of the previous weeks.

In a determination issued by the agency on August 23, 2018, the agency disqualified the claimant from benefits for the period of August 13, 2017, through November 11, 2017. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on September 28, 2018. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On February 12, 2019, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence. Thereafter, the review examiner issued his consolidated findings of fact.

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 timely certify for benefits for the period of August 13, 2017, through November 11, 2017, is supported by substantial and credible evidence and is free from error of law.

After reviewing the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we reverse the review examiner's decision.

## Findings of Fact

The review examiner's consolidated findings of fact, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant worked for a temporary staffing service assigned to a company (Company A), as a Data Mining Specialist, which assignment ended on May 26, 2017. (Exhibit 8)
2. On May 30, 2017, the claimant was assigned by another temporary staffing agency to another company (Company B), as a Business Analysis Senior Specialist, which ended on July 18, 2017. (Exhibit 9)
3. The claimant also worked part-time for a pizzeria (Company C).
4. When the claimant's assignment ended with Company A on May 26, 2017, the claimant's Manager at Company A told the claimant to contact him about employment if things did not work out with Company B.
5. On July 18, 2017, the claimant's assignment with Company B ended.
6. On August 20, 2017, the claimant separated from Company C.
7. On August 25, 2017, the [claimant] filed a claim with the Massachusetts Department of Unemployment Assistance (DUA) with an effective begin date of August 13, 2017.
8. After separating from Company B on July 18, 2017, the claimant waited to file his initial claim until August 25, 2017, because he was waiting to see what would happen with obtaining new employment with Company A.
9. On or about August 25, 2017, the claimant called the Department of Unemployment Assistance (DUA) and was told by a DUA Representative he needed to obtain and submit W-2 forms for the past 5 years and without them he would not receive benefits. The claimant had 3 jobs in the past 5 years, 2 with staffing agencies and one with a pizza shop.
10. On August 29, 2017, the claimant spoke with a DUA Representative. The claimant was unable to open links or email from the DUA. The claimant did not recall saying to the DUA Representative he would not go to the [City A] career center or others in his area as stated in a note (Remand Exhibit 8) authored by the DUA Representative on August 29, 2017. The claimant at the time of the August 29, 2017 call was in contact with his Manager at Company A about being hired for a position: "I suppose I said I wouldn't go." "I still had hopes for the [Company A] position."

11. The claimant was sent a Monetary Determination dated September 19, 2017 establishing his weekly benefit rate at \$597.00 per week. (Remand Exhibit 9). The claimant “operated under the assumption” the determination did not matter because of his August 25, 2017 conversation with the DUA Representative requiring submission of his W-2’s which he had not yet obtained.
12. In mid-November 2017, on an unknown exact date, the claimant attempted to file his W-2’s which he received all at once. The claimant was unable to upload the W-2’s. The claimant spoke with a DUA representative and was told the W-2 forms were not needed and he did not need to submit them. The claimant felt he had been dealt with fraudulently by the DUA because he had been told he needed to submit W-2’s and later was told he did not need to submit them.
13. On December 6, 2017, the claimant called the DUA (Remand Exhibit 10) and it was suggested he go to the [City A] career center to talk in person about how the whole process works. The claimant went to the [City A] career center, Future Works, and was told for the first time he must file for benefits weekly.
14. On December 6, 2017, the claimant re-opened his claim with an effective re-open date of December 3, 2017.
15. The claimant certified for benefits for the week beginning August 13, 2017 through November 18, 2017.
16. Other than August 25, 2017, August 29, 2017, and December 6, 2017, the claimant did not have any other communications with the DUA. The claimant was “putting together” his W-2’s.
17. On August 23, 2018, the claimant was issued a Notice of Disqualification determining that he did not have good cause for failing to claim benefits timely and therefore was not eligible for benefits beginning August 13, 2017 through November 11, 2017.

### 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. However, as discussed more fully below, we believe that the review examiner’s consolidated findings of fact support the conclusion that the claimant had good cause for failing to timely certify for benefits for the period of August 13, 2017, through November 11, 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.

The specific filing requirements in question are found at 430 CMR 4.01(5), which provides, in relevant part, as follows:

To continue a claim, a claimant shall report as directed by the Commissioner or his or her authorized representative for each period for which benefits are being claimed, and shall furnish all facts pertaining to eligibility with respect to each week for which he or she is claiming benefits.

The regulations go on to specify that a claimant must complete a benefit certification form in-person at a local office or via postal mail within 21 days of the Saturday of the week for which benefits are being claimed. We note that this language from the regulations is outdated, as it is no longer possible for claimants to certify for weekly benefits in-person or via postal mail. Rather, claimants have the option to certify for weekly benefits electronically via UI Online or via telephone using the automated Telecert line. However, the underlying requirement is the same; a claimant must request weekly benefits within 21 days of the Saturday of the week in question. *See also* DUA Service Representative Handbook Section 1612(A). If a claimant does not request weekly benefits within this 21-day period, he has the burden to demonstrate that he had good cause for his failure to do so.

In this case, the claimant filed an unemployment claim effective August 13, 2017, but did not file any weekly certifications for benefits until December 8, 2017. After remand, the review examiner credited the claimant's testimony that he failed to request weekly benefits during this period of time due to a conversation that he had with a DUA representative on August 25, 2017, when he first filed his claim. The claimant was given misinformation by the DUA representative — namely, that he would not be eligible for benefits unless he submitted W-2 tax forms for all of his employers from the previous five years. The claimant further testified that he was not even aware that he had completed filing a claim at that time and was not informed of the weekly certification process<sup>1</sup>. We conclude that these circumstances constitute good cause. Later, upon learning that W-2 forms were not necessary and being informed of the weekly certification process, the claimant reopened his claim and promptly requested benefits for each of the past weeks.

We, therefore, conclude as a matter of law that the claimant had good cause for failing to comply with the registration and filing requirements, pursuant to G.L. c. 151A, § 25(a).

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<sup>1</sup> We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

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 of August 13, 2017, through November 11, 2017. He may receive benefits for those weeks, so long he is otherwise eligible under Chapter 151A.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 30, 2019**



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