

Claimant is entitled to receive benefits under 25(a) for the week in which he traveled to England but was present in the U.S. for 4 days, a majority of the first week. Claimant was disqualified for the second week in which he was only present in the U.S. for 3 days.

**Board of Review
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Issue ID: 0023 9008 63

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 week beginning November 19, 2017, through the week ending December 2, 2017. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant filed a claim for unemployment benefits with the DUA on September 8, 2017, which was approved. On December 12, 2017, the DUA sent the claimant a Notice of Disqualification, informing him that he was not eligible for benefits for the two-week period beginning November 19, 2017, through December 2, 2017, resulting in an overpayment of \$1,484.00. 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 in a decision rendered on February 17, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was disqualified for failing to meet the registration and filing requirements of G.L. c. 151A, § 25(a), for the two weeks at issue. 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, which states that the claimant failed to meet the filing requirements under G.L. c. 151A, § 25(a), when he certified for benefits while outside of the country from November 22, 2017, to November 29, 2017, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. On 12/12/17, the Department sent the claimant a notice of disqualification. The disqualification was based upon the claimant's certification for benefits while outside the country under Section 25 (a) for the period between the weeks beginning 11/19/17 through 12/2/17.
2. The claimant applied for benefits on 9/8/17 after being separated from his most recent employer.
3. The claimant had been approved for benefits under this claim.
4. The claimant chose to certify his eligibility for benefits online.
5. The claimant left for [City A], England on 11/22/17 and returned to the United States on 11/29/17. The claimant's spouse had to attend a seminar in England which the claimant accompanied her to in order to care for their 4 ½ month old child.
6. The claimant certified his eligibility during the weeks in question.

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 below, we reject the review examiner's legal conclusion that the claimant was outside of the country for the majority of the week beginning November 19, 2017.

The review examiner decided this issue under 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. 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 United States does not have a reciprocal agreement governing the exchange of information relevant to the payment of unemployment benefits with any foreign country except Canada. *See* 430 CMR 4.05(7); DUA Service Representative Handbook § 1616 (B). As a result, a claimant is not allowed to certify for benefits for periods in which he was outside of 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.¹ *See Hall v. Dir. of Division of Unemployment Assistance*, No. 12-P-948, 2013 WL 757802 (Mass. App. Ct. Mar. 1, 2013),

¹ *See* 42 U.S.C. § 1320b-7(a) and (b); and 20 C.F.R. § 603.23(b).

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, that purpose and policy is not implicated where the claimant submitted his certifications from such foreign locations but was actually in the United States during the majority of time during the weeks covered by such certifications. *See* Board of Review Decision 0015 1720 09 (December 22, 2015).²

Here, the record indicates that, during the week beginning Sunday, November 19, 2017, the first of two weeks at issue, the claimant left [City B] with his family, to fly to [City A] at 9:15 p.m., Wednesday, November 22, 2017, the day before the Thanksgiving holiday. He returned to [City B] on Wednesday, November 29, 2017.³ Thus, during the week beginning November 19, 2017, the claimant was present in the United States for four days, through Wednesday, November 22, 2017, the majority of the week, and he is eligible to receive benefits for that week pursuant to G.L. c. 151A, § 25(a). However, the record also indicates that, for the following week beginning November 26, 2017, the claimant flew back to the United States on November 29, 2017, arriving at 6:50 p.m., and therefore was in the United States for only three days during that week. Thus, the claimant is disqualified for the week beginning November 26, 2017, as he was not present in the United States for a majority of that week.

² Board of Review Decision 0015 1720 09 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

³ 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 affirmed in part and reversed in part. The claimant is entitled to receive benefits for the week beginning November 19, 2017, if otherwise eligible. The claimant is not entitled to receive benefits for the week beginning November 26, 2017.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 29, 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.

SPE/rh