

**The claimant had good cause for his failure to complete the RESEA review by the deadline and in the months that followed, as he was first unable to complete the review at his scheduled time because the career center closed unexpectedly, and he subsequently reasonably relied on a career center representative's erroneous statement that he could not reschedule the review because he had already missed the deadline.**

**Board of Review  
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**Issue ID: 0024 0783 47**

## **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 on October 30, 2017. On December 25, 2017, the DUA issued a Notice of Disqualification stating that the claimant was ineligible for benefits as of the week ending December 23, 2017, and indefinitely thereafter, until he attended a Re-employment Services Eligibility Assessment (RESEA) review meeting. 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 13, 2018. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that although the claimant had good cause for his failure to attend the RESEA review meeting by the deadline, his subsequent failure to complete that requirement disqualified him under G.L. c. 151A, § 25(a). We have considered the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner's conclusion that the claimant is ineligible for benefits under G.L. c. 151A, § 25(a), because he failed to complete the RESEA review, is supported by substantial and credible evidence and is free from error of law, where the review examiner found that a career center representative told the claimant on December 26, 2017 that it was too late to attend the RESEA review, as he had missed the deadline.

### Findings of Fact

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

1. The effective date of the claim is 10/29/17.
2. DUA determined that the claimant must attend a Reemployment Services and Eligibility Assessment review (RESEA review) by 12/22/17.
3. The claimant attended a career center seminar on 12/18/17. He signed up to attend a RESEA review scheduled for 12/22/17 at 1:00 p.m.
4. The claimant arrived at the career center on 12/22/17 at 1:00 p.m. He discovered that the career center was closed due to a snowstorm.
5. The claimant went back to the career center on 12/26/17 to inquire about the RESEA review. A career center representative told the claimant that it was too late to attend the RESEA review because he missed the deadline for it.
6. As of 2/18/18, the claimant has not yet completed the RESEA review.

### Ruling of the Board

In accordance with our statutory obligation, we review the 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. Upon such review and as discussed more fully below, the Board adopts the review examiner's findings of fact. In adopting these findings, we deem them to be supported by substantial and credible evidence. However, we conclude that the findings support an award of benefits to the claimant.

The claimant failed to timely participate in a RESEA review, which is one of the DUA's registration and filing requirements. 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. The commissioner shall furnish copies of such requirements to each employer, who shall notify his employees of the terms thereof when they become unemployed.

Also relevant to our analysis are the following DUA regulations that pertain to mandatory participation in RESEA services. 430 CMR 4.01 provides, in pertinent part:

#### (8) Profiling.

(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.

On December 18, 2017, the claimant completed the initial RESEA requirement that he attend a career center seminar. The DUA had determined that the claimant had until December 22, 2017, to complete the final requirement, which consisted of a review meeting. The claimant set up an appointment to complete the review on December 22<sup>nd</sup> but, when he arrived at the career center found it was closed due to inclement weather. The claimant returned to the career center on December 26<sup>th</sup> to inquire about his next steps and was told by a career center representative that it was too late to attend the RESEA review meeting, because the claimant had missed the deadline. During the February 12, 2018, hearing, the claimant further explained that the representative told him he had to go a hearing before he could reschedule the review meeting. The review examiner did not inform the claimant that the career center representative’s advice was inaccurate, and that he could and should complete the RESEA review requirement as soon as possible in order to reinstate his benefits. We take administrative notice of the fact that it was not until March 6, 2018, that the claimant completed his RESEA review at a career center.<sup>1</sup>

The findings establish that the claimant had good cause for his failure to complete the RESEA by the December 22<sup>nd</sup> deadline, as he found that the career center was closed when he reported for

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<sup>1</sup> This information is available from the DUA’s electronic record-keeping system.

his review meeting that day. Furthermore, the claimant's failure to complete the review in the months following the deadline was also for good cause due to circumstances beyond the claimant's control. It is clear from the totality of the record before us and the review examiner's finding that the career center representative gave the claimant erroneous information, that the claimant's failure to complete the RESEA review for several months was based on his reasonable reliance on the misinformation he received. Since he completed the RESEA review on March 6, 2018, he has satisfied the DUA's RESEA requirements.

The review examiner's decision is reversed. The claimant is entitled to benefits under G.L. c. 151A, § 25(a), as of the week ending December 23, 2017, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 27, 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](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.

SVL/rh