

**Claimant did not demonstrate a compelling personal reason to certify for benefits in an untimely manner. He is disqualified under G.L. c. 151A, § 25(a).**

**Board of Review  
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**Issue ID: 0024 1345 18**

## **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 affirm.

The claimant separated from employment and filed a claim for unemployment benefits with the DUA, effective October 16, 2016, which was approved. However, in a determination issued on October 13, 2018, the DUA issued a Notice of Disqualification for the period August 20, 2017, through October 21, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's determination and denied benefits from August 20 through October 15, 2017, in a decision rendered on March 23, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not establish good cause for his failure to timely certify for the benefit weeks at issue, and, thus, he was disqualified under G.L. c. 151A, § 25(a). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to obtain further evidence about why the claimant could not certify for benefits even after speaking with DUA representatives on a number of occasions. The claimant attended the remand hearing on June 10 and August 30, 2019. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant failed to show good cause for his failure to timely certify for benefits, is supported by substantial and credible evidence and is free from error of law.

### **Findings of Fact**

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

1. On 10/20/16, the claimant filed a claim for unemployment benefits with an effective date of 10/16/16.
2. The claimant is dyslexic.
3. From “the beginning of 2016,” the claimant experienced difficulty using his UI Online password.
4. For the weeks 10/16/16 through 02/18/17, the claimant certified his claim for unemployment and collected benefits.
5. In February 2017, the claimant stopped certifying his claim for benefits each week because he was incarcerated.
6. In August 2017, the claimant was released from jail and reopened his unemployment claim.
7. On 08/22/17, the claimant certified his claim for the week 08/13/17 through 08/19/17 and was paid benefits.
8. After 08/22/17, the claimant stopped certifying his claim again.
9. Between 08/23/17 until 12/26/18, the claimant’s difficulty with his UI Online password prevented him from certifying for benefits.
10. On 12/22/17, a DUA representative made the weeks 08/06/17 – 10/08/17 available for the claimant to certify.
11. On 12/22/17, the claimant spoke with two DUA representatives regarding his unemployment claim. The DUA representatives made the following notations in the claimant’s UI Online Event Log: “Week(s) made requestable/ Staff has made week(s) available to be requested by the claimant. To view the specific weeks, select the notes link.”
12. On 12/30/17, the claimant successfully submitted a request for benefits for the week beginning 08/06/17.
13. On 12/30/17, the claimant only submitted a request for benefits for the one week beginning 08/06/17 because it was the only week he saw available to request.
14. On 01/22/18, the claimant spoke to a DUA Representative regarding certifying for the other weeks he requested be made available to him to certify. The DUA Representative told the claimant she would look into why the additional weeks weren’t available to him and would contact him.

15. On 01/22/18, the DUA Representative noted in the claimant's UI Online Evert Log: "Claimant calling about overpayment. Explained that a week was claimed while he was incarcerated. He said that he didn't request it advised to contact the authorities. Asking for weeks August to October. Assisted with FF for last cert (past due) informed him it will be adjudicated. Claimant complained advised him to contact 211."
16. Agency records show that in September 2018, the claimant contacted the DUA and requested the weeks 08/20/17 through 10/15/17 be made requestable to him.
17. On 09/20/18 and 09/21/18, a DUA Representative made the weeks 08/20/17 through 10/15/17 requestable for the claimant.
18. On 09/24/18, an Incident Report was submitted by a DUA Representative in connection with this claim.
19. On 10/03/18, a DUA Representative noted that the 09/24/18 Incident Report was closed as resolved by UI Help as of 10/02/18.
20. On 10/03/18, a DUA Representative made the weeks 08/20/17 through 10/15/17 available for the claimant to certify.
21. The claimant was not notified that the weeks were made available for him to certify.
22. On 12/26/18, the claimant requested benefits for the weeks (08/20/17 through 10/15/17) he asked the DUA to make requestable in September 2018.
23. The claimant was able to certify the weeks at this time because he was able to successfully reset his UI Online password and access UI Online.
24. On 10/03/18, the local office sent the claimant a Notice of Disqualification for the period beginning 08/20/17 through 10/21/17 under Section 25(a) of the Law because he failed to certify his claim in a timely manner.

#### Credibility Assessment:

The claimant participated in the first remanded hearing on 06/10/19 via telephone and attended the second on 08/30/19 in person. The claimant was unable to obtain phone records showing his telephone contact with the DUA because his cable company/phone provider did not have phone records from 2017. The claimant consistently testified throughout all of the hearings that he was unwilling [sic] to sign into his account due to password difficulty, that a DUA Representative told him she would contact him when the weeks were made available for him to certify, and had he known the DUA Representative had made

the weeks requestable in October 2018, he would not have waited until December to request benefits for the weeks (08/20/17 through 10/15/17).

### Ruling of the Board

In accordance with our statutory obligation, we review the record and 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 original 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.<sup>1</sup> Based upon these findings and the record as a whole, we conclude that the claimant is not entitled to benefits under G.L. c. 151A, § 25(a).

At issue is whether the claimant met his statutory obligation to certify for unemployment benefits for the weeks at issue in a timely fashion. 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 DUA generally allows up to three weeks to certify for benefits and a claimant may be ineligible for those benefits if he fails to do so within that time period. *See* 430 CMR 4.01(5)(d), (e), and 4.04(1). DUA regulations also provide for an exception for late certification, if the claimant can prove to the satisfaction of the DUA that he had good cause for failing to certify in a timely manner. *See* 430 CMR 4.04(2).

The phrase “good cause” is not defined in the statute or in these particular regulations. As a matter of policy, the DUA will allow a late certification if the claimant can demonstrate a compelling personal reason which prevented the claimant from certifying on time. Examples include personal illness, the illness of a household or family member who requires the claimant's care, death of a household member or immediate family member, or jury duty. *See* DUA Service Representative Handbook, § 1612(A).

In the present case, the claimant successfully certified for benefits from October 16, 2016, through February 18, 2017. Consolidated Finding # 4. Following a period of incarceration, he re-opened his unemployment claim and again successfully certified and collected benefits for the week beginning August 13, 2017. *See* Consolidated Findings ## 6 and 7. It is the subsequent weeks, from August 20 – October 14, 2017, for which he certified late.<sup>2</sup> We must decide

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<sup>1</sup> The use of the word “unwilling” in the credibility assessment appears to be a typographical error. The claimant asserted that he was “unable” to sign in to his account due to the difficulty with his password. Although not incorporated into the review examiner's findings, this testimony is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *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).

<sup>2</sup> He certified for the week beginning August 6, 2017, in December, 2018. *See* Consolidated Finding # 12. October 14, 2017 corresponds the end of the DUA benefit week, which runs from Sunday through Saturday. In 2017, October 14<sup>th</sup> was a Saturday.

whether the claimant has demonstrated that he had a compelling personal reason for certifying for these weeks well beyond the DUA's three-week grace period.

During the hearing, the claimant had many things to say about how DUA was at fault for not paying him benefits. Yet, the record shows that, in response to the claimant's calls, DUA representatives made these weeks available for the claimant to certify on three separate occasions, on December 22, 2017, on September 20, 2018, and again on October 3, 2018. *See Consolidated Findings ## 10, 17, and 20.* The claimant blamed the DUA for not telling him that they had made these weeks available to certify. *See Consolidated Findings ## 14, 21, and the review examiner's credibility assessment.* We decline to hold the DUA responsible for information that was readily available to the claimant on UI Online.

Ultimately, the review examiner found that it was the claimant's difficulty with his UI Online password that prevented him from certifying for benefits between August 23, 2017, and December 26, 2018. Consolidated Finding # 9. We note that this password difficulty did not prevent the claimant from certifying on August 22, 2017, or on December 30, 2017, when he successfully certified through UI Online for the weeks of August 13, 2017, and August 6, 2017, respectively. *See Consolidated Findings ## 7 and 12.* Additionally, on December 30, 2017, he certified for only one week at that time, not because of his password, but because "it was the only week he saw available to request." *See Consolidated Finding # 13.*

The review examiner found that the claimant was finally able to certify on December 26, 2018, for the benefit weeks August 20 through October 14, 2017, because he was able to successfully reset his UI Online password and access UI Online. *See Consolidated Findings ## 22 and 23.* The claimant testified that at that point he realized that the UI Online security question to reset his password was asking for the model of his first car, and he had been putting in the make.<sup>3</sup> While this kind of human error is understandable, it does not constitute a compelling personal reason for not certifying earlier. It is not similar in nature to an illness, death, or jury duty obligation.

We have considered Consolidated Finding # 2, which states that the claimant is dyslexic. The review examiner did not render any findings about whether this disability had any impact upon the claimant's ability to certify.<sup>4</sup> Moreover, the claimant has not presented any medical evidence to substantiate this diagnosis or to explain how, in light of this kind of disability, he could successfully certify for benefits during the first four months of his claim, and again for the single weeks in August and December, 2017, but not at any other time. In short, the record does not contain sufficient credible evidence to show that the claimant was unable to timely certify because of dyslexia.

We, therefore, conclude as a matter of law that the claimant has not demonstrated good cause for not requesting payment of benefits in a timely manner, a registration and filing requirement under G.L. c. 151A, § 25(a).

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<sup>3</sup> The claimant consistently testified to this at both the original and the remand hearing.

<sup>4</sup> Because this review examiner is no longer available, any further remand for further findings would have to be for an entirely new, *de novo* hearing. We decline to do so given the age of this case, and, instead, look for reasonable inferences from the existing findings and undisputed evidence in the record.

The review examiner's decision is affirmed. The claimant is not entitled to receive benefits for the period August 20, 2017, through October 14, 2017.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 24, 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.

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