

Where the review examiner found that the claimant did not receive her initial RESEA letter, the claimant was not issued a Notice of Disqualification because she had stopped requesting benefits, and the claimant promptly completed the RESEA Review after first becoming aware of the requirement, the claimant had good cause for her failure to complete the RESEA Review earlier.

**Board of Review
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Issue ID: 0024 2365 09

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 October 22, 2017. On June 21, 2018, the DUA issued a Notice of Disqualification stating that the claimant was ineligible for benefits beginning December 31, 2017, and indefinitely thereafter, until she completed an Unemployment Insurance Reemployment Services and Eligibility Assessment (RESEA) review process. The claimant appealed the determination to the DUA hearings department. The claimant participated in a hearing on the merits conducted via telephone. In a decision rendered on August 10, 2018, the review examiner modified the agency's initial determination and concluded that the claimant had good cause for failing to complete the RESEA requirements prior to May 5, 2018, but not thereafter, and was ineligible for the period of May 6, 2018 through June 23, 2018. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to demonstrate that she had good cause for failing to complete the RESEA review requirements 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 have good cause for failing to complete the RESEA review requirements by May 6, 2018, under G.L. c. 151A, § 25(a), is supported by substantial and credible evidence and is free from error of law, where the review examiner concluded that the claimant did not receive her initial RESEA notification letter and there is no other indication that the claimant was made aware of the requirements prior to June 15, 2018.

Findings of Fact

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

1. The claimant filed an unemployment insurance claim on 10/27/17, and obtained an effective date of her claim of 10/22/17.
2. The claimant elected to receive information from DUA via U.S. Mail when she filed the above claim.
3. On 12/4/17, DUA mailed a Career Center Seminar/RESEA letter to the claimant.
4. The letter stated that the claimant was required to attend a Career Center Seminar on or before 12/22/17, and complete RESEA Review requirements on or before 1/5/18.
5. The claimant did not receive the above letter.
6. On 12/25/17, DUA mailed a Notice of Disqualification to the claimant, for the week beginning 12/17/17 to 12/23/17, for not attending a Career Center Seminar by 12/23/17.
7. The claimant received the above Notice of Disqualification. She did not appeal the above Notice of Disqualification.
8. The claimant worked from 1/2/18 to 3/10/18.
9. The claimant re-opened the above claim on 3/22/18, effective 3/18/18.
10. The claimant underwent hip replacement surgery, and was cleared to return to light duty work on 5/8/18.
11. The claimant contacted DUA in late March/early April 2018 to inquire about her claim and was told she was denied benefits for not completing RESEA Review requirements.
12. The claimant did not make an appointment to complete RESEA Review requirements in late March/early April 2018 because she was not medically cleared to work.
13. The claimant attended a Career Center Seminar on 6/26/18.
14. The claimant completed RESEA Review requirements on 6/29/18.

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 # 11 is unsupported insofar as this event occurred in “late March/early April 2018.” At the hearing, the claimant did not mention the months of March or April, and the claimant could not have been told that “she was denied benefits for not completing RESEA Review requirements” at that time, because she was not in fact denied benefits for this reason until June 21, 2018. The claimant actually testified that she first learned of the RESEA issue in June, 2018, that this was several weeks after re-opening her claim, and that she re-opened her claim in May. This is consistent with DUA records, which indicate that the claimant reopened her claim on May 15, 2018, and that she spoke to staff about the pending RESEA issue on June 15, 2018¹. Though the review examiner reasonably credited the claimant’s testimony as to this event, the date is incorrect. 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 her RESEA review, which is a certification requirement of DUA. Consequently, her 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 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;

¹ Though the DUA’s UI Online system shows nine earlier notes about conversations between the claimant and staff in 2018, none of the earlier notes mention the RESEA issue.

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 $\frac{1}{2}$); 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 December 4, 2017, informing her of the requirement to attend a RESEA review meeting by January 5, 2018. The review examiner credited the claimant's testimony that she did not receive that letter. Shortly thereafter, the claimant returned to work and stopped requesting benefits after December 23, 2017. Consequently, when the January 5, 2018, RESEA Review deadline passed, the claimant was not issued a Notice of Disqualification or otherwise informed of her failure to meet this deadline. Without having received the December 4, 2017, letter, a Notice of Disqualification in regards to her failure to meet the RESEA Review deadline, or otherwise being put on notice, the claimant had no way of knowing that she was required to complete a RESEA Review in order to resume collecting benefits.

The claimant later reopened her claim on March 22, 2018, requested benefits for two weeks, and then stopped requesting benefits again because she was medically unable to work and was disqualified pursuant to G.L. c. 151A, § 24(b). The claimant was later cleared to return to work, and reopened her claim once again on May 15, 2018. A review of UI Online notes regarding the claimant's contact with DUA staff from this period of time indicates that the G.L. c. 151A, § 24(b), disqualification and the claimant's name change were discussed with the claimant, but the pending RESEA issue was not. On June 15, 2018, a staff member added an end date to the G.L. c. 151A, § 24(b), disqualification and apprised the claimant of the fact that she still would not be able to receive

benefits because she had not completed a RESEA Review². A review of the entire record, as well as UI Online, indicates that this was the first date that the claimant was made aware that she had to complete a RESEA Review in order to receive benefits.

The claimant later completed a RESEA Orientation seminar on June 26, 2018, and a follow-up RESEA Review on June 27, 2018³. The claimant testified that she could not do so earlier than this because the career center's computer system was down. Contemporaneous DUA staff notes from UI Online are consistent with this explanation⁴.

In addition, records from the MOSES computer system used by the career center indicate that the claimant previously completed a RESEA Orientation seminar on September 13, 2017⁵, an unrelated career center training workshop on December 13, 2017, and had several conversations with career center staff about attending another training in May and June 2018⁶. Notes from the UI Online computer system indicate that the claimant was in frequent contact with DUA staff since March 2018. From this, it is evident that the claimant was making sincere efforts to comply with the eligibility requirements.

In summary, because she did not receive the initial December 4, 2017, letter informing her of the RESEA requirements and because she was not timely issued a Notice of Disqualification for missing the January 5, 2018, deadline, the claimant had no way of knowing that she was required to complete a RESEA Review for six months. Upon first being informed of this requirement on June 15, 2018, the claimant made prompt efforts to schedule a RESEA Review, but was not able to do due to technical issues. She then completed all of the RESEA requirements as of June 27, 2018, twelve days after being first apprised of the requirement. These circumstances constitute good cause for the claimant's failure to complete the RESEA Review earlier.

² One UI Online staff note, dated June 15, 2018 states: "changed claimant's name at her request using copies of driver's license, social security card and marriage license located in fact finding - supporting document dated 5-20-18 also added end date to hearings indefinitely disqualified capability issue using release from physician to rtw in same ff." Another UI Online staff note from later the same day states: "called back claimant to let her know that her payments will not be issued because she has an outstanding RESEA review issue from Dec 2017 and MOSES screens do not indicate that she attended the RESEA Seminar or Review."

³ While the Finding of Fact indicate that this latter event occurred on June 29, 2018, a thorough review of notes from the MOSES computer system used by the career center indicate that it occurred on June 27, 2018.

⁴ UI Online staff notes indicate that the claimant had a number of conversations with DUA staff on June 18 and June 21, 2018. One of these notes states: "Citrix system has been down since 06/14/2018, career centers unable to update their system." Another states: "CLMT called for update. Reported that she has not been able to complete RESEA review because Career Ctr has not been able to schedule a time for her."

⁵ This was prior to even filing an unemployment claim, which is why the claimant had to attend the same seminar again on June 26, 2018.

⁶ This scheduled appointment was cancelled due to lack of training funds.

The review examiner's decision is reversed. The claimant is entitled to receive benefits beginning December 31, 2017, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 21, 2018



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.

JRK/th