

The claimant had good cause for her failure to complete the RESEA review by the deadline and in the months that followed, as the claimant had returned to work, and an email from a career center employee stated that once the claimant returned to work, the RESEA program would close out. The claimant lost her new job within ten days, but was not aware she had to complete the RESEA at that point, as nothing in the email indicated that the RESEA program would reopen if the claimant began collecting again.

**Board of Review
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Issue ID: 0025 1624 89

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 February 6, 2018. On April 9, 2018, the DUA issued a Notice of Disqualification stating that the claimant was ineligible for benefits as of the week ending April 7, 2018, and indefinitely thereafter until she attended a 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 May 8, 2018. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not have good cause for her failure to attend the RESEA review meeting by the deadline and was, therefore, 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 additional evidence pertaining to the claimant's understanding of the RESEA requirement. The claimant participated in the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner's decision, which concluded that the claimant is ineligible for benefits under G.L. c. 151A, § 25(a), because she failed to complete the RESEA review by the deadline, is supported by substantial and credible evidence and is free from error of law, where the review examiner found after remand that the claimant believed she did not have to complete the RESEA review because she had started working part-time.

Findings of Fact

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

1. The claimant has elected to receive correspondences from the Department of Unemployment Assistance electronically (Exhibit 2).
2. On March 5, 2018, the Department electronically mailed the claimant a letter, titled Mandatory Participation to Keep Your Unemployment Benefits, notifying the claimant of a responsibility to attend a Career Center Seminar by March 23, 2018 and to complete an RESEA review by April 6, 2018 (Exhibit 3).
3. The Department's Event Log Search Results lists the claimant viewed her Inbox on March 5, 2018 (Exhibit 4).
4. On March 12, 2018, the claimant started working part-time at [Employer A].
5. On March 15, 2018, a worker from the Career Center sent the claimant the following e-mail: "You were selected for a Mandatory Career Center Seminar. Your deadline date to attend is 3/23/18. The [Region A] Career Center seminars are held on Monday at 1PM, Tuesday and Wednesday at 9AM; Failure to attend by your deadline date will cause your unemployment checks to stop. Please call me at the career center to schedule. If you have gone back to work and are no longer collecting UI, please fill out the I'm Hired form attached and return it to the [Region A] Career Center by e-mail, fax, or U.S. Mail. This will take care of closing out this program (Exhibit 7 Page 3)."
6. The March 15, 2018 email from the career center staff member does not differentiate between part-time and full-time work.
7. The claimant did not speak with the clerk that sent her the March 15, 2018 email.
8. The March 15, 2018 email from the career center staff member does not state what would happen to the RESEA program requirements after it was closed, if a claimant loses their job and begins collecting benefits again.
9. The claimant returned the form attached to the March 15, 2018 e-mail. The claimant returned the form because she found a job. At the time the claimant returned the form, the claimant did not intend to continue collection of benefits.
10. As of March 15, 2018, the date the claimant returned the form attached to the email to the career center, the claimant understood that she met the requirements of not having to do the mandatory Career Center Seminar as that what was (sic) the e-mail was about. The word RESEA was not listed in the e-

mail from the career center. The claimant did not understand what the RESEA was when she sent the e-mail back to the career center.

11. At the time the claimant returned the form attached to the e-mail, she did not understand that the RESEA program requirements would not apply to her even if she stopped working and began collecting benefits again. The claimant did not know what the RESEA requirement was regarding as the RESEA was not in the e-mail she received.
12. In the MOSES system, a staff member, SJOHN, on March 16, 2018 made an entry containing information about the claimant's part-time job with [Employer A] as of March 12, 2018 (Remand Exhibit 5B). Based upon this entry, the career center did receive the return-to-work form sent by the claimant in March.
13. The claimant took a break in requesting benefits between March 11, 2018 and March 28, 2018 because the claimant was working.
14. The claimant was employed part-time at [Employer A] from March 12, 2018 until March 22, 2018. The claimant's last date of work at [Employer A] was on March 22, 2018. The claimant was working 3 days a week for 5 hours per day. During the week running from Sunday March 11, 2018 through Saturday March 17, 2018, the claimant worked 15 hours. During the week running from Sunday March 18, 2018 through Saturday March 24, 2018, the claimant worked 15 hours.
15. The Payment History screen in the UI Online database lists that on March 28, 2018, the claimant requested benefits for the week ending March 17, 2018 and on April 2, 2018, the claimant requested benefits for the week ending March 24, 2018. The claimant believes she was trying to request benefits commencing March 28, 2018 forward.
16. The claimant submitted the return-to-work form to the Career Center for her part-time employment at the grocery store (Exhibit 7 Page 2).
17. The claimant's last date of work for the grocery store was March 22, 2018. The claimant has separated from her part-time work at the grocery store.
18. The claimant has continued to request unemployment insurance benefits since the week ending March 17, 2018 (Exhibit 1).
19. The claimant did not complete the RESEA review by the April 6, 2018 deadline date.
20. The claimant still had not completed the RESEA review as of the date of the initial hearing session held on May 7, 2018. The claimant did not complete the

RESEA review as she did not believe that she had to complete the RESEA review, as she started working part-time at a grocery store on March 12, 2018.

21. On April 9, 2018, the Department issued a Notice of Disqualification denying the claimant benefits under Section 25(a) of the Law commencing the week ending April 7, 2018 and until she met the requirements of the RESEA review.
22. The claimant appealed the Notice of Disqualification (Exhibit 7).
23. After the claimant received the notices of disqualifications [sic] (and attended hearings) for not attending the RESEA seminar and review, the claimant did not understand that she was required to complete these requirements despite her prior understanding that the program had been closed out.
24. On June 6, 2018, the claimant completed the RESEA review at a career center (Remand Exhibit 8). In the Applicant Notes from the MOSES database from June 6, 2018, the following information is listed: “(RESEA Review), (Attained) (Remand Exhibit 8).”
25. The claimant started receiving unemployment benefits again commencing the week ending June 9, 2018 after she had 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 consolidated 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.

Since timely participation in RESEA service is a filing requirement for unemployment benefits, pertinent to our consideration of this matter is 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 following DUA regulations 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^{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.

After remand, the review examiner found that, on March 15, 2018, a career center employee sent the claimant an email stating that her deadline to attend the mandatory career center seminar was March 23rd, but that, if she had gone back to work and was no longer collecting, she could submit an “I’m Hired” form and that would take care of closing out this program. Since the claimant began a part-time job on March 12th and did not intend to continue collecting benefits while working, she submitted the “I’m Hired” form to the DUA. The claimant did not complete the RESEA requirements by the deadline. The review examiner found that the claimant did not complete the RESEA review by the deadline of April 6th, because she did not think she had to complete it since she returned to work on March 12th.¹

¹ The review examiner made findings that the claimant did not know what the RESEA requirement was, as it was not mentioned in the email she received on March 15th. However, we note that the claimant’s testimony makes clear that she was merely confused about the name, as the career center worker referred to the RESEA requirements as a seminar and then as a program. As evidenced by Consolidated Finding of Fact # 20, the claimant essentially

Given the contents of the March 15th email, we find the claimant's belief that she did not have to complete the RESEA review because she began working to be reasonable. We also find that her belief remained reasonable even after she lost her job, as there was nothing in the March 15th email stating that the RESEA program would reopen if the claimant stopped working. In light of the totality of the findings, the claimant had good cause for her failure to complete the RESEA by the April 6th deadline.

Furthermore, we find that the claimant's failure to complete the review in the months following the deadline was also for good cause, as it was due to circumstances outside of the claimant's control. While the MOSES system shows that the claimant completed the RESEA requirements in early June, including the RESEA review on June 6, 2018, we assume someone must have clarified for the claimant that she was required to complete the RESEA review despite having gone back to work for a short period of time. There is, however, no indication in the record that this clarification was made significantly prior to June 6th.² Thus, we cannot conclude that the claimant, once becoming aware of the "new" RESEA requirements, failed to complete them within a reasonable period of time.

understood that the career center requirements (regardless of their name) did not apply to her, because she had gone back to work, albeit only temporarily.

² We note that we are not addressing the question of whether or not a claimant who has returned to work and stopped collecting benefits, and then reopened his claim due to a loss of employment, is subject to the RESEA requirements once he begins collecting again. We do not reach this question here, because there is no indication in the record that the claimant was made aware of any such requirement significantly prior to the date she eventually completed the 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 April 7, 2018, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 24, 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.

SVL/rh