

Where a claimant stopped certifying for benefits after an attorney told him that an appeal to district court would probably not succeed, the claimant did not have good cause for failing to fulfill the filing and registration requirements, as the attorney's advice was not a circumstance beyond the claimant's control which prevented him from certifying. The claimant also did not show that any depression symptoms he may have had were severe enough to prevent him from timely certifying.

**Board of Review
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Issue ID: 0026 0606 75

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), which found that the claimant did not have good cause for failing to timely certify for benefits for the period from March 25, 2018, through May 12, 2018.¹ 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 on October 3, 2017, and the claim was determined to be effective October 1, 2017. Thereafter, he certified for benefits until the week ending January 20, 2018. In late June of 2018, the claimant requested that he be allowed to certify for the weeks beginning January 21, 2018 through May 12, 2018. On July 18, 2018, the DUA sent the claimant a Notice of Disqualification, which informed him that he did not have good cause for failing to certify for benefits beginning January 21, 2018. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner modified the agency's determination in a decision rendered on September 1, 2018.

The review examiner concluded, pursuant to G.L. c. 151A, § 25(a), that the claimant had good cause for failing to certify from January 21, 2018, through March 24, 2018, but did not have good cause for failing to certify for the period from March 25, 2018, through May 12, 2018. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the claimant's application for review. 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 had good cause for failing to certify for benefits from January 21, 2018, through March

¹ The review examiner did find, however, that the claimant had good cause for failing to certify for benefits from January 21, 2018, through March 24, 2018.

24, 2018, but did not have good cause from March 25, 2018, through May 12, 2018, is supported by substantial and credible evidence and is free from error of law, where the review examiner concluded that a lawyer's comment to the claimant was good cause for failing to certify for benefits.

Findings of Fact

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

1. On October 3, 2017, the claimant filed an initial claim for unemployment benefits, effective October 1, 2017.
2. On October 20, 2017, the Department of Unemployment Assistance (the DUA) issued the claimant a Notice of Disqualification under Section 25(e)(2) of the Law. The Notice notified the claimant he was required to certify his weekly benefits, if he appeals the decision.
3. The claimant filed a late appeal for his determination on his separation from employment determination [sic].
4. The DUA determined the claimant did not have good cause for the late appeal. The claimant appealed the decision to the Hearings Department.
5. The Hearings Department affirmed the decision that the claimant did not have good cause for his late appeal. The claimant appealed the Decision to the Board of Review.
6. The Board of Review affirmed the Hearings Decision.
7. The claimant asked an attorney if he should appeal the decision to District Court. The attorney told the claimant she didn't think the decision would be overturned.
8. The claimant stopped claiming unemployment benefits after the week ending January 20, 2018 because he believed he was done with the appeals process due to the advice of the attorney and he was depressed.
9. The claimant spoke to a different attorney and the attorney filed an appeal in District Court on behalf of the claimant on March 27, 2018.
10. On June 26, 2018, the District Court overturned the claimant's late appeal disqualification.
11. On June 29, 2018, the claimant requested to certify his weekly benefits for the week beginning January 21, 2018 through the week ending May 12, 2018.

12. On July 18, 2018, the DUA issued the claimant a Notice of Disqualification under Section 25(a) of the Law for the period beginning January 21, 2018 through May 12, 2018.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact, except for the date included in Finding of Fact # 9. No testimony was given to establish that the date of the claimant's court appeal was March 27, 2018. No documentation in the record supports such a finding either. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we reject the review examiner's legal conclusions, because we conclude that the claimant did not have good cause at any time for failing to timely certify for benefits.

As noted above, the review examiner disqualified the claimant pursuant to 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.

One of the registration and filing requirements prescribed by the agency is that a claimant must certify for benefits to receive the benefits. *See, generally*, 430 CMR 4.01. Generally, this is done on a weekly basis. However, DUA policy provides that a claimant has twenty-one days to certify for any given week. If certification is attempted beyond twenty-one days, "good cause" is needed for the failure to timely certify. *See* DUA Service Representative Handbook § 1612(A). In this case, the review examiner found that the claimant stopped certifying for benefits in January, 2018, for two reasons: the advice of an attorney and depression. Finding of Fact # 8. We are not persuaded that the evidence in the record supports a finding of good cause on either basis.

We begin first with the DUA's own policy regarding late certifications, with which we agree. Section 1612(A) of the DUA's Service Representative Handbook provides, in part, the following:

The claimant has twenty-one days to return a benefit certification form in a timely manner . . . Consideration of good cause [if there is not a timely certification] is limited to a compelling personal reason that prevented the claimant from submitting the benefit certification in a timely manner. Examples include, but are not limited to:

- Claimant illness

- Illness of a household or family member who requires care by the claimant
- Death of a household member or immediate family member
- Jury Duty

Generally, the DUA interprets “good cause” to mean something beyond a claimant’s control which prevented him from promptly, timely, or properly acting on an issue related to his claim. For example, the DUA’s regulation regarding whether a party has good cause for failing to timely appeal a determination issued by the DUA states that the appeal deadline may be extended if the party shows that “circumstances beyond his or her control prevented the filing of a request for a hearing within the prescribed ten day filing period.” 430 CMR 4.14. The late appeal regulation gives a lengthy list of circumstances and includes a catch-all provision, covering “[a]ny other circumstances beyond a party’s control which prevented the filing of a timely appeal.” 430 CMR 4.14(12).

As to the facts of this case, the first reason why the claimant failed to timely certify for benefits was because the first attorney he spoke with thought that he would not prevail at the district court. Consequently, he thought that his appeals were over. We do not think that the attorney’s comments or the claimant’s feeling that the appeals process was over constitute good cause, as we have defined it above. The claimant’s testimony clearly indicated that he was contemplating appealing the Board of Review’s decision, as he talked with multiple attorneys after the Board’s decision was rendered. The claimant did not testify that anyone, whether it was a DUA employee or one of the attorneys he spoke with, told him to stop certifying. The attorney’s comment did not prevent the claimant from certifying for benefits. He certainly could have continued to certify as he had been doing up until the week ending January 20, 2018. However, he did not do so. We think this was a choice, rather than a circumstance beyond his control which prevented him from certifying.

As to the depression issue, we certainly recognize that an illness, including a mental health issue, could be severe enough to prevent a person from continuing to certify for benefits. However, we do not think that the claimant presented sufficient evidence to show that the depression was so debilitating that it prevented him from timely certifying. The review examiner asked the claimant several times during the hearing why he failed to continue certifying for benefits. The first time, the claimant testified that he had lost all of his appeals, he got depressed, he gave up, and he did not think anything was going to happen if he appealed. The second time, the claimant responded that he stopped certifying because he had been denied, and he thought that he would continue to be denied. The third time, the claimant indicated that he got extremely depressed because all of his appeals were denied. As noted above, during his testimony the claimant also offered that he was in contact with multiple attorneys regarding an appeal to district court. If he was talking to the attorneys about an appeal to district court, we do not think that his depression was so severe that he would have been unable to continue to certify for benefits. The claimant’s testimony, as a whole, suggests that the claimant was discouraged, unhappy, or despondent about losing his appeals through the DUA. It does not sound like the claimant was incapacitated, unable to function, or mentally unaware of what was going on with his claim. If those things were true, we could say that something beyond the claimant’s control prevented his timely certifications. *See e.g.*, Board of Review Decision 0014 8604 96 (June 29, 2015) (claimant’s

documented PTSD affected his ability to certify timely for benefits).² However, the claimant's behavior here does not show that he was unable to comply with the weekly certification requirements.

We also do not believe that the medical note submitted by the claimant, *see* Exhibit # 7, shows that he had good cause for failing to certify. The letter does not indicate what "social stressors" were affecting the claimant, and it states that the claimant was taking positive steps to improve his health. There is no indication in the letter how severe the claimant's symptoms were and what specific effects they were having on his daily life activities. It is insufficient to show that the "signs and symptoms" of depression were so bad that the claimant could not certify for benefits for almost six months.

We, therefore, conclude as a matter of law that the review examiner's decision to allow late certifications for the period from January 21, 2018, through March 24, 2018, is not supported by substantial and credible evidence and free from error of law, because the claimant did not show that he had good cause for failing to timely certify for benefits during that period of time. However, the review examiner's decision to deny late certifications for the period from March 25, 2018, through May 12, 2018, is supported by the record and free from error of law.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied late certifications for the period from January 21, 2018, through May 12, 2018.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 6, 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

² Board of Review Decision 0014 8604 96 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

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.

SF/rh