

Family illness created good cause for the claimant's failure to meet his initial RESEA deadlines. Since he subsequently completed both the rescheduled initial and final RESEA reviews, he may not be disqualified under G.L. c. 151A, § 25(a).

**Board of Review
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Issue ID: 0028 4636 06

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 14, 2018, and was approved. However, in a determination issued on December 24, 2018, the DUA disqualified him from receiving benefits, beginning December 16, 2018, until he attended a Reemployment Services and 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. That decision was rendered on March 8, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that because the claimant had failed to complete his RESEA review, he 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, the claimant's appeal, and records in the Department of Career Services Massachusetts One Stop Employment System (MOSES) database.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant failed to complete his RESEA review and, therefore is ineligible for benefits under G.L. c. 151A, § 25(a), is supported by substantial and credible evidence and is free from error of law.

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 10/14/18.

2. The DUA determined that the claimant must attend a career center seminar by 12/07/18. The DUA determined that the claimant must complete a Reemployment Services and Eligibility Assessment review (RESEA review) by 12/21/18.
3. The DUA created a notice titled “Mandatory Participation to Keep Your Unemployment Benefits.” The notice is dated 11/19/18. The notice indicates that the claimant must attend a career center seminar by 12/07/18. The notice indicates that the claimant must complete a RESEA review by 12/21/18. The DUA transmitted this notice to the claimant’s UI Online inbox on 11/19/18.
4. The claimant’s father was hospitalized in mid-October 2018. The claimant’s father was discharged from the hospital at the end of October 2018.
5. The claimant’s father has lived with the claimant after his discharge from the hospital. The claimant’s father has COPD, emphysema, and a back ailment. The claimant’s father required constant care and the claimant provided this care.
6. The claimant’s daughter experienced difficulties with mental illness. The claimant provided continuous care for his daughter.
7. The claimant did not prioritize his RESEA program obligations because he was focused on his father’s and his daughter’s health needs.
8. The claimant did not attend the career center seminar by the deadline. The claimant did not complete the RESEA review by the deadline. The claimant missed the deadlines because he was focused on his father’s and his daughter’s health needs.
9. The claimant completed the career center seminar on 1/24/19.
10. The claimant attended the first portion of the RESEA review on 1/24/19.
11. The claimant is scheduled to complete the RESEA review on an unknown date between 3/07/19 and 3/31/19.
12. As of 3/07/19, the claimant has not completed the RESEA review.

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 ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner’s findings of fact except to note that Findings of Fact ## 11 and 12 are no longer accurate. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more

fully below, we reject the review examiner's legal conclusion that the claimant is disqualified due to his failure to complete the RESEA review process.

The review examiner disqualified the claimant for failing to meet the requirements set forth under 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.

Specifically, he concluded that the claimant failed to meet the DUA's requirement that he complete a RESEA review. Those regulations are found under 430 CMR 4.01, which provide, 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.

There is no question that the claimant missed the original DUA deadlines for his attendance at a Career Center Seminar/Initial RESEA meeting and the second RESEA Review, which were December 7, 2018, and December 21, 2018, respectively. *See* Finding of Fact # 3 and Exhibit 3.¹ In the normal course, failure to meet those deadlines results in a disqualification for benefits, unless the individual has good cause for failing to attend the initial seminar or the follow-up review session. 430 CMR 4.01(8)(a).

One of the reasons listed as constituting good cause for failure to meet the RESEA deadlines is where a claimant's family member is ill. 430 CMR 4.01(8)(b)(2). Here, the review examiner found that the claimant was unable to perform his RESEA reviews because he had to provide constant care for both his father, who had recently been hospitalized for COPD, emphysema, and arthritis in his back, as well as his daughter, who was struggling with a mental illness. *See* Findings of Fact ## 4–8. In light of these family obligations, the review examiner concluded that the claimant *had* established good cause for failing to complete his RESEA reviews by the deadline. We agree.

Nonetheless, the review examiner ultimately disqualified the claimant because there was no evidence that the claimant had completed the RESEA review process. The review examiner rendered his decision on March 8, 2019. He relied upon the claimant's hearing testimony and records from the MOSES database (*see* Exhibit 2), showing that the claimant had merely completed his initial RESEA review at that point. However, after the review examiner rendered his decision, the claimant completed his RESEA review on March 18, 2019.²

Since the claimant had good cause to miss his initial RESEA deadlines, and he thereafter attended a rescheduled reemployment services seminar and a follow-up review session, we conclude as a matter of law that he may not be disqualified under G.L. c. 151A, § 25(a).

¹ Exhibit 3 is the DUA's November 19, 2018, notice requiring mandatory participation in the RESEA program.

² We take administrative notice of a March 18, 2019, staff entry in the MOSES database, which states, "Attained RESEA Review." MOSES is maintained by the Department of Career Services. DUA has access to this database.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period December 16, 2018, through March 16, 2019, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 19, 2019



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. 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.

AB/rh