

0030 9537 40 (Sept. 23, 2019) – Receiving of an offer to start a full-time job within a couple of weeks of a scheduled RESEA review constituted good cause for the claimant's failure to attend.

Board of Review
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Issue ID: 0030 9537 40

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 separated from employment and filed a claim for unemployment benefits, effective March 3, 2019, which was approved. However, in a determination issued on May 6, 2019, the DUA disqualified her from receiving further benefits, beginning April 28, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's initial determination and denied benefits only for the single week beginning April 28, 2019, in a decision rendered on May 22, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not have good cause to miss her scheduled Reemployment Services and Eligibility Assessment (RESEA) review meeting, and, thus, she 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's full-time job offer did not constitute good cause to miss her RESEA review, 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. On March 8, 2019, the claimant filed a claim for unemployment benefits effective March 3, 2019. When she filed the claim, she requested to receive electronic correspondence from the Department of Unemployment Assistance (the DUA). The claimant verified her email with the DUA.

2. On April 1, 2019, the DUA issued the claimant a Notice of her requirement to complete a Reemployment Services and Eligibility Assessment Program (RESEA). The Notice notified the claimant she was required to attend a RESEA career center seminar no later than Friday, April 19, 2019 and a review by Friday, May 3, 2019.
3. The claimant received and read the Notice via her UI Online inbox (mailbox).
4. On April 4, 2019, the claimant attended a RESEA seminar at the career center in [City A], MA.
5. The claimant was scheduled to attend a RESEA review on April 23 or 24, 2019.
6. The claimant did not attend the review because she received an offer of full time employment sometime around the 2nd week of April 2019, which she began on May 6, 2019.
7. On May 6, 2019, the DUA issued the claimant a Notice of Disqualification, which notified her she was subject to disqualification under Section 25(a) of the Law for the week beginning April 28, 2019 and until she completed the RESEA review.
8. The claimant began full time employment on May 6, 2019.

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 conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems 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 did not have good cause to miss her RESEA review.

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, she concluded that the claimant failed to meet the DUA's requirement that she complete a RESEA review. Those requirements 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 $\frac{1}{2}$); 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.

(Emphasis added.)

As highlighted above, the purpose of conducting RESEA reviews is to provide job search assistance to unemployed individuals whom the agency identifies as likely to need assistance to find a new employment. 430 CMR 4.01(8)(a). Here, the findings show that, between her RESEA seminar and the scheduled RESEA review, the claimant found new employment. *See Findings of Fact ## 4–6.* The only reason she did not attend the scheduled April 23 or 24, 2019,

RESEA review is because she was starting a new full-time job on May 6, 2019. *See* Finding of Fact # 6.

The DUA's regulation lists a number of circumstances that constitute good cause for missing a RESEA appointment. Included among them is attendance at a job interview. 430 CMR 4.01(8)(b)(1). It therefore, stands to reason that securing full-time employment would also excuse a claimant's attendance at a RESEA review. Although the claimant did not start her new employment until 12 days later, it is quite obvious that she no longer needed job search assistance from RESEA, as she had already found new employment.¹

Given the express purpose of the RESEA program and the allowance to miss an appointment for a job interview, we conclude as a matter of law that the claimant's full-time job offer constituted good cause under 430 CMR 4.01(8)(a) to miss her RESEA review. The claimant may not be disqualified under G.L. c. 151A, § 25(a).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning April 28, 2019, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 23, 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

¹ We also note DUA's policy to waive a claimant's obligation to search for a full-time job under G.L. c. 151A, § 24(b), if a claimant has a return-to-work date within four weeks. *See* DUA Service Representative Handbook, § 1501. Here, the claimant was returning to full-time employment within two weeks.

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