

The claimant had good cause for not completing the RESEA review, as he returned to work full-time prior to the deadline to complete the review, and he promptly informed his local career center about his return to work.

**Board of Review
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Issue ID: 0032 0929 82

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 July 14, 2019. On September 9, 2019, the DUA issued a Notice of Disqualification to the claimant, which stated that the claimant was not eligible for benefits beginning on September 1, 2019, because he did not complete his RESEA review, as required under G.L. c. 151A, § 25(a). 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 September 23, 2020. 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 his failure to complete the RESEA review by the deadline or thereafter, and, thus, 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, 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 his failure to complete the RESEA review, is supported by substantial and credible evidence and is free from error of law, where the findings establish that the claimant did not complete the review because he returned to work full-time, and he notified his local career center of his circumstances prior to the RESEA review deadline of September 6, 2019.

Findings of Fact

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

1. On 8/5/2019, the DUA electronically notified the claimant of the need to attend a (RESEA) [r]eview by 9/6/2019.
2. The claimant had received an offer of full-time employment, which he accepted and began on 8/19/2020.
3. The claimant contacted the local career center and was informed that he did not need to attend since he accepted full-time employment.
4. The claimant began full-time employment on 8/19/2019, and was subsequently separated on 1/10/2020.
5. The claimant reopened his unemployment claim in April 2020.
6. The claimant has attended a RESEA [r]eview since reopening his claim in April 2020.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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 as follows. We set aside the portion of Finding of Fact # 2 that states the claimant began full-time employment in 2020, as the remaining findings show that it was in 2019. We also note that there is a scrivener's error in Finding of Fact # 6, as the totality of the record shows that as of the date of the hearing, the claimant had not completed his RESEA review. 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 did not have good cause for his failure to complete the RESEA review, because commencing full-time work and notifying the agency prior to the deadline to complete the RESEA review constitutes good cause for said failure.

Because the claimant failed to complete a mandatorily required RESEA review, we analyze his eligibility for benefits 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.

Also relevant in this appeal are the following DUA regulations, which 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(g½); 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.

Additionally, 430 CMR 4.04(7)(c) instructs that the DUA shall apply the “reasonable person” test in determining whether just cause exists for failure to participate.

On August 5, 2019, the DUA enrolled the claimant in the RESEA program, which is a mandatory program designed to assist claimants with their search for employment. The claimant was notified that he had until September 6, 2019, to complete the program, but he never completed it. On or about August 12, 2019, the claimant notified the staff at his local career center that he had obtained full-time employment, and the staff informed him that he was no longer required to participate in the RESEA program.¹ The claimant began his new job on August 19, 2019, which was approximately two weeks before the September 6th deadline, and he became unemployed again on

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

January 10, 2020. In his decision, the review examiner denied benefits to the claimant because he failed to complete the RESEA review after he separated from his job on January 10, 2020. We disagree with the review examiner's conclusion that the claimant did not have good cause for failing to complete the RESEA program, as the claimant's return to full-time work in August of 2019 exempted him from the program requirements.

The DUA's regulation lists a number of circumstances that constitute good cause for not completing the RESEA requirements. 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. Here, the claimant began full-time employment prior to the September 6, 2019, deadline to complete the RESEA review, and he promptly notified his local career center about his return to work. 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 had good cause not to complete the RESEA review by the deadline of September 6, 2019. *See* 430 CMR 4.01(8)(a) and Board of Review Decision 0030 9537 40 (Sept. 23, 2019). 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 ending September 7, 2019, and for subsequent weeks, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 22, 2020



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 (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.

