

**Board of Review  
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**Issue ID: 0032 3628 37**

## **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 the claimant benefits based on his military service. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On October 10, 2019, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties participated in the hearing. In a decision rendered on December 20, 2019, the review examiner affirmed the agency determination, concluding that the claimant could not establish a claim based on his military service pursuant to the provisions of 5 U.S.C. § 8521–8525. The claimant timely appealed to the Board, and we accept the claimant’s application for review.

### **Findings of Fact**

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

1. The claimant worked as an Air Crew Flight Equipment Technician for the employer, the United States Air Force, from August 14, 2018, until the present time.
2. The claimant enlisted in the United States Air Force on April 27, 2018. The claimant enlisted for a six-year period.
3. The claimant’s first active duty order was for the period of August 14, 2018 through February 5, 2019 (176 days) at [Location A] and [Location B] Air Force Bases in Texas. The claimant completed the required active service.
4. The claimant’s second active duty order was for the period of February 25, 2019 through August 16, 2019 (152 days) at [Location C] Air Force Base in [Town A], Massachusetts. The claimant completed the required active service.
5. The claimant filed his claim for unemployment benefits on August 30, 2019. The effective date of the claim is August 25, 2019.

6. On October 10, 2019, a Notice of Disqualification was issued under Section 8521(a) of Title 5 indicating “You do not meet the criteria under Section 8521(a) of Title 5 as amended for unemployment compensation for ex-service members (UCX) because your active duty in reserve status was not continuous for 180 days or more.” “You are ineligible to receive benefits based on your military service.” The claimant filed an appeal to that determination.
7. The claimant’s third active duty order began on November 4, 2019 and is to be completed on April 3, 2019 at the [Location C] Air Force Base in [Town A], Massachusetts.

### Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner’s decision, and the claimant’s appeal, we conclude that the review examiner’s findings of fact, except for the dates noted in Finding of Fact ## 4 and 7, are based on substantial and credible evidence in the record. As to Finding of Fact # 4, the claimant testified that his active duty order began February 25, 2019, and ended August 16, 2019. However, the claimant’s DD-214 for his second active duty order does not show those dates. The DD-214 shows that the claimant’s active duty service began on February 24, 2019, and ended July 26, 2019.<sup>1</sup> We accept those dates as the dates of the claimant’s second round of active duty service. With respect for Finding of Fact # 7, the claimant testified that his third active duty order began on November 4, 2019, and is to be completed on April 3, 2020.

These errors, however, do not affect the outcome of the decision. We note that neither period of active service time amounts to at least 180 days of continuous service, which the claimant must have in order to base his claim on his military service. *See* 5 U.S.C. § 8521(a)(1).<sup>2</sup> Indeed, the claimant did not dispute this at all during the hearing and even noted that, due to budget cuts, service members are not being given active duty orders for 180 days or more. Thus, the decision that the claimant cannot base his claim on his military service is free from any error of law affecting substantive rights.

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<sup>1</sup> *See* Exhibit 2, page 2, a copy of the claimant’s DD Form 214. Because this is part of the unchallenged evidence in the record, it is properly referred to in our decision today. *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).

<sup>2</sup> An ex-service member must have sufficient federal service in order to base a claim on his military service. Under 5 U.S.C. § 8521(a)(1), federal service is defined as “active service (not including active duty in a reserve status unless for a continuous period of 180 days or more) in the armed forces” which meets specific criteria as laid out in the rest of the law. There was no dispute that the claimant was in reserve status. *See* Exhibit 2, pp. 2–3 (DD-214 Forms showing the claimant’s reserve obligation end date of April 26, 2024). Moreover, there was no dispute that he was not in active duty for 180 continuous days or more.

The review examiner's decision is affirmed. The claimant is not entitled to an unemployment claim based on his military service.<sup>3</sup>

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – February 5, 2020**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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](http://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.

SF/rh

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<sup>3</sup> During the hearing, the claimant argued that he could be eligible for benefits based on employment with two other employers. Those employers are listed in Exhibit # 10. The claimant should contact the DUA if he wishes to appeal the Monetary Determination issued to him when he filed his claim for benefits.