

Given the claimant's confusion about filing for regular or a new PUA benefit program, and in light of the temporary flexibilities encouraged in applying state good cause provisions during the COVID-19 public health emergency, held Claimant had good cause for his failure to timely file for benefits within the meaning of G.L. c. 151A, § 25(a).

**Board of Review
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Issue ID: 0050 1250 47

*** CORRECTED ORDER TO RESCIND AND RE-ISSUE FINAL DECISION ***

On March 12, 2021, the Board of Review denied the claimant's application for review of a hearing decision by a review examiner in the Department of Unemployment Assistance (DUA). In that hearing decision, the review examiner concluded that the claimant did not present good cause for late certification of benefits for the first few weeks of his claim, the weeks beginning March 22, 2020, through April 18, 2020. The DUA has now asked the Board of Review to reconsider its denial based upon evidence in the record, which the review examiner failed to incorporate into her findings of fact and decision. For the reasons set forth below, the Board hereby RESCINDS its denial of review, and reverses the review examiner's decision.

The claimant filed a claim and became eligible for benefits, effective, March 22, 2020. He did not claim benefits until the week beginning April 19, 2020, and asked the DUA to allow him to submit late certifications for the earlier weeks. In a determination issued on August 12, 2020, the DUA denied his request. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination and denied his request to allow late certifications for the weeks beginning March 22, 2020, through April 18, 2020, in a decision rendered on January 27, 2021.

The review examiner concluded that the claimant did not have good cause for his failure to timely certify for benefits, as required under G.L. c. 151A, § 25(a). Our decision is based upon a 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, because the claimant received the DUA's Guide to Benefits and Employment Services for Claimants, he did not have good cause for his failure to timely certify for benefits, 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 claimant filed a claim for unemployment benefits with an effective date of March 22, 2020.

2. After filing his claim for benefits, the claimant received a copy of the Department of Unemployment Assistance's (DUA) A Guide to Benefits and Employment Services for Claimants booklet (the guide).
3. For unknown reasons, the claimant did not certify and request benefits [sic] approximately one month.
4. After opening his claim for unemployment benefits, the claimant logged onto UI Online multiple times.
5. The claimant began certifying for unemployment benefits during the week beginning April 19, 2020.
6. The claimant requested that DUA allow him to submit late certifications for all prior weeks of his claim beginning March 22, 2020.
7. On August 12, 2020, the DUA issued the claimant a Notice of Disqualification informing him that he was ineligible for benefits for each week during the period beginning March 22, 2020 through April 18, 2020, because the reason that he did not claim benefits in a timely manner did not constitute good cause.
8. The claimant appealed the disqualification.
9. Since he filed for benefits until the [sic] December 29, 2020, the date of the unemployment hearing, the claimant has not moved residences.

Ruling of the Board

We review the decision made by the review examiner and the underlying record 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 as follows. We reject Finding of Fact # 3, as it is unsupported by the evidence in the record. As discussed more fully below, we do not agree with the review examiner's legal conclusion that the claimant lacked good cause for his failure to timely certify for benefits.

G.L. c. 151A, § 25(a), 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.

Finding of Fact # 3 provides that, for the first month of his claim, the claimant did not certify and request benefits for unknown reasons. However, during the hearing, the claimant did explain the reason. He testified that, although he filed a claim for regular unemployment benefits, at the time he believed that he was supposed to be on Pandemic Unemployment Assistance (PUA). He further

explained that Governor Baker had issued a public announcement urging claimants to wait to apply for PUA so as not to clog the system. In response to that announcement, he decided not to do anything else on his application for regular benefits.¹

A review examiner is not required to believe self-serving, unsupported evidence, even if it is uncontroverted by other evidence. McDonald v. Dir. of Division of Employment Security, 396 Mass. 468, 470 (1986). But, here, the review examiner neither mentions this testimony nor explains why she deemed it not to be credible, so there is no way to know whether it was deliberate, or she simply overlooked it.

We note that the DUA's electronic record-keeping system shows that the claimant filed his unemployment claim on April 4, 2020. Governor Baker had just declared a state of emergency due to COVID-19 and then issued an order closing all non-essential businesses.² On March 18, 2020, Congress had enacted the Emergency Unemployment Insurance Stabilization and Access Act (EUISAA) which, among other things, permitted states to implement flexibility in their unemployment compensation law and policies with respect to work search, wait week, good cause, and employer experience rating on an emergency temporary basis as needed to respond to the spread of the COVID-19 pandemic.³ Congress had also enacted the new PUA unemployment benefit program,⁴ and people were filing unemployment claims in record numbers.

Whether or not the claimant used his best judgment in deciding to hold off certifying for benefits, it is fair to say that there was a great deal of confusion about the two benefit programs at this point in time. In light of the extraordinary series of events occurring when the claimant filed his claim, and the federal government's encouragement to flexibly apply state good-cause provisions during the COVID-19 public health emergency, we believe the claimant had good cause for a three-week delay in certifying for benefits.

We, therefore, conclude as a matter of law that, under these particular circumstances, the claimant has established good cause for his failure to timely certify for benefits within the meaning of G.L. c. 151A, § 25(a).

¹ While not explicitly incorporated into the review examiner's findings, this testimony is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus 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).

² See Executive Order No. 591 (Mar. 10, 2020) and Executive Order 13 (Mar. 23, 2020).

³ See EUISAA, Pub. Law 116-127 (Mar. 18, 2020), § 4102(b); U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 13-20 (Mar. 22, 2020), 5, p. 6-7.

⁴ The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, Pub. L. 116-136 (Mar. 27, 2020), § 2102.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the weeks beginning March 22, 2020, through April 18, 2020, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
*** DATE OF DECISION - May 5, 2021**



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**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.

AB/rh