

**The claimant was properly held to have good cause to not attend a RESEA review, where he did not attend because he had returned to work. Following another layoff, he was improperly disqualified after re-opening his claim, as he had already been determined to have good cause to miss the original RESEA review, was otherwise eligible, and the DUA had not notified him to attend a rescheduled review. The claimant was eligible for benefits pursuant to G.L. c. 151A, § 25(a), and 430 CMR 4.01(8)(b), (c), and (d).**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: 0072 6293 61**

### 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 we affirm in part and reverse in part.

The claimant was laid off by his employer and filed a claim for benefits, effective July 18, 2021. In a determination issued on September 7, 2021, the DUA disqualified him from receiving benefits beginning August 29, 2021. 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 in a decision rendered on June 15, 2022. The review examiner awarded benefits from August 29 through September 4, 2021, but denied benefits thereafter. We accepted the claimant's application for review.

Benefits were awarded after the review examiner determined that the claimant had good cause for his failure to complete the Reemployment Services and Eligibility Assessment (RESEA) Program review by the deadline, but disqualified him thereafter pursuant to 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 is supported by substantial and credible evidence and is free from error of law, where she concluded that the claimant initially had good cause to not attend a scheduled RESEA review on September 3, 2021, because he had returned to work, but was not entitled to benefits thereafter, including after a subsequent layoff.

### Findings of Fact

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

1. The claimant filed an unemployment claim having an effective date of 7/18/2021. The claimant elected to receive information electronically.

2. On 8/2/2021, the Department of Unemployment Assistance (DUA) sent the claimant a letter (hereafter referred to as the RESEA letter) informing him that he must complete a RESEA review by 9/3/2021.
3. DUA sent the RESEA letter to the claimant electronically as well as by mail. The electronic version of the letter automatically goes into the claimant's UI-Online In-Box.
4. The RESEA letter stated, in part: **“Failure to participate or show good cause for not participating will result in a denial of UI benefits.”**
5. The claimant was recalled to work on 9/4/2021.
6. The claimant was laid off again in the summer of 2022.
7. The claimant did not complete the RESEA review.

### 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 conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. The portion of Finding of Fact # 6, which states that the claimant's layoff occurred in the summer of 2022 is not supported by the record, as both the claimant's testimony and DUA's electronic record-keeping system, UI Online, reflect a separation date of May 13, 2022.<sup>1</sup> In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

The claimant has been denied benefits due to his failure to complete a required RESEA review. We analyze his eligibility 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 are the following DUA regulations, which pertain to participation in RESEA services. 430 CMR 4.01 provides, in pertinent part:

(8) Profiling.

---

<sup>1</sup> 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).

(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.

In this case, the review examiner concluded that the claimant had good cause not to attend the RESEA review scheduled for September 3, 2021, pursuant to 430 CMR 4.01(8)(b)(9). We agree. He did not attend, because he had returned to work and, obviously, did not require the DUA’s re-employment assistance services. *See* Finding of Fact # 5.

However, for some reason, the review examiner disqualified him beginning the following week. We believe this disqualification is contrary to the regulations and the facts in this case.

Specifically, we consider that 430 CMR 4.01(8)(d) states that a claimant who has been determined to have good cause for failing to attend a RESEA review shall be eligible for benefits if otherwise eligible under G.L. c. 151A. We note that there are no other issues on this claim appearing in the DUA’s UI Online system, which would otherwise disqualify the claimant from receiving benefits. Since we agree that the claimant had good cause for failing to attend a RESEA review by September 3, 2021, he should remain eligible.

We also consider that 430 CMR 4.01(8)(c) does state that an individual who fails to attend a RESEA review (for good cause or otherwise) shall attend a rescheduled review session as directed by the Commissioner. In this case, there is nothing in the record to indicate that, upon re-opening his claim in May, 2022, the DUA directed him to attend a scheduled review. Further, we see no evidence of such a notice in the agency's Massachusetts One-Stop Employment System (MOSES). In fact, the claimant's undisputed testimony indicates that he did not know he had to attend the RESEA review until the review examiner advised him to do so during the hearing.<sup>2</sup> Without such notice of a rescheduled RESEA review, the claimant may not be disqualified for his failure to complete a review immediately upon re-opening his claim.

We, therefore, conclude as a matter of law that pursuant to 430 CMR 4.01(8)(b)(9), (c), and (d), the claimant may not be disqualified from receiving any benefits due to his failure to complete a RESEA review.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits as of the week beginning August 29, 2021, and for subsequent weeks, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 15, 2022**



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  
(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)

---

<sup>2</sup> Notes in the MOSES system show that the claimant then promptly contacted a RESEA representative on June 9, 2022, the date of the hearing, scheduled, and then completed his RESEA review on June 24, 2022.

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