

Although the DUA originally disqualified the claimant pursuant to G.L. c. 151A, § 24(b), the DUA hearings department properly added G.L. c. 151A, § 25(a), to the hearing notice based upon the claimant's statements that he has been living in Panama since prior to filing his claim. Since the DUA had provided notice that it cannot pay benefits to individuals who are living outside the country, and the claimant's decision to move there was a strategic financial decision knowing he might soon be discharged, held he is ineligible for benefits. He did not present good cause for failing to meet the filing and registration requirements under § 25(a).

**Board of Review
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Issue ID: 0073 1335 75

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 affirm.

The claimant was discharged from employment. On July 27, 2021, he filed a claim for unemployment benefits with the DUA, effective July 25, 2021, which was denied in a determination issued on September 30, 2021. 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 benefits in a decision rendered on April 29, 2022.

Benefits were denied after the review examiner concluded that the claimant failed to meet the DUA's filing and registration requirements under G.L. c. 151A, § 25(a), and, thus, he was disqualified.

The claimant appealed to the Board. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, the Board denied his application for review on June 2, 2022.

The claimant filed an appeal in the District Court. Pursuant to a request from the DUA, the Board issued an order on July 26, 2022, to rescind its denial of the claimant's application for review and to remand the case to the original review examiner in order to correct errors in the numbering of exhibits and to allow the claimant to present further evidence. Following a remand hearing, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant is ineligible for benefits pursuant to G.L. c. 151A, § 25(a), because he certified for benefits from Panama, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant was working at a hospital in Massachusetts. While working for that employer, the claimant was residing in Massachusetts. The claimant's last day with that employer was July 27, 2021.
2. On July 12, 2021, while the claimant was on a leave with the employer, the claimant traveled to [City A], Panama.
3. The claimant was terminated from employment on July 27, 2021, while he was in [City A], Panama.
4. The claimant remained living in [City A], Panama from July 12, 2021, to the current time.
5. The claimant filed his claim for unemployment benefits on July 27, 2021, while in [City A], Panama. The effective date of the claim is July 25, 2021.
6. When filing his claim for unemployment benefits, the claimant provided an address in [City B], Massachusetts. The claimant's sister resides at that address.
7. The claimant did not see the link to the Guide to Benefits and Employment Services when filing his claim.
8. While in [City A], Panama, the claimant has been looking for full-time employment in his field within the United States. The claimant was submitting applications to potential employers. The claimant was making at least three contacts per week and has not received any offers of work.

Credibility Assessment:

During the remand hearings of August 23, 2022, and September 19, 2022, the claimant did not provide any additional information as to his claim but argued that the Department of Unemployment Assistance misapplied the Law in the case at hand.

The Review Examiner did make corrections to the exhibits which had been offered as part of the record at the initial hearing on March 21, 2022, and were incorrectly marked at that time. The corrections are as follows: Exhibit #10 are [sic] pages 10 through 11 from A Guide to Benefits and Employment Services for Claimants (hereinafter, "the Guide") and Exhibit #11 are [sic] pages 19 through 20 from the Guide. At the initial hearing, this Review Examiner erroneously assigned those documents incorrect exhibit numbers.

Ruling of the Board

In accordance with our statutory obligation, we review record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. We note that, although labeled as a credibility assessment, the review examiner used this section of her consolidated findings to simply characterize the testimony which the claimant offered during the remand hearing and to clarify the numbered exhibits. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

The review examiner disqualified the claimant pursuant to 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 claimant argues that the DUA has not explained at any point what is meant by the registration and filing requirements. However, regulations pertaining to filing and registration requirements are found at 430 CMR 4.01 and 4.05. “[A]n individual who has wage credits in Massachusetts but is *not residing* in Massachusetts, may register and file claims as provided for in 430 CMR 4.05, Interstate Claims.” 430 CMR 4.01(1) (emphasis added). The regulations at 430 CMR 4.05 allow for claims to be filed from another state, and they include specific procedures for doing so. Claimants who move to another state, for example, must register in that venue's public employment office and file for benefits using uniform interstate claim forms and in accordance with the uniform procedures developed pursuant to the Interstate Benefit Payment Plan (IBPP). 430 CMR 4.05(2) and (4)(a). The regulations expressly extend these procedures to claims taken in or for Canada (430 CMR 4.05(7)), because the governments of the United States and Canada have signed a treaty providing for the reciprocal payment of unemployment benefits.¹

These DUA regulations, promulgated pursuant to its authority under G.L. c. 151A, § 25(a), are specific as to how claimants may become eligible to collect unemployment benefits from outside Massachusetts. They do not allow for filing or certifying from Panama.

Moreover, when the claimant filed his claim for benefits, the DUA provided him with a link to the Guide for Benefits and Employment Services (Guide). Consolidated Finding # 7. The Guide includes an “Out of country advisory,” which states, “Federal Law prohibits the Commonwealth

¹ Agreement between the Government of Canada and the Government of the United States of America, Effective 1942, Amended 1951. This treaty expressly permits Canada to participate in the Interstate Benefit Payment Plan.

of Massachusetts from accepting claims from outside the United States, Puerto Rico, U.S. Virgin Islands, and Canada.”² Several pages later, the Guide states³:

You are not eligible for benefits for any period of time you are outside of the United States, its territories, or Canada; you should not request benefits for that time. Filing for and receiving benefits while out of the country will result in an overpayment and you will be responsible for returning benefits previously paid to you.

The fact that the claimant did not read the DUA regulations or see the link to the Guide does not mean that the agency failed to provide notice that the registration and filing requirements did not allow him to file and certify for benefits from Panama.

Nor do we believe the claimant has presented good cause for failing to comply with the requirement to file and certify from a location within the United States, its territories, or Canada. He asserts that he was stranded in Panama because he was terminated from his job. This is disingenuous. The record indicates that he moved his family to Panama prior to being discharged. *See Consolidated Finding # 2.* The claimant has presented as evidence an email that he sent to his employer before he was terminated, which states that he sold his house and moved his family to Panama to keep his living expenses low as a precautionary measure in the event that he is fired.⁴ In our view, the claimant’s decision to live in Panama was a strategic financial choice, and it does not constitute good cause pursuant to G.L. c. 151A, § 25(a).

The claimant also urges the Board to reject the review examiner’s decision, asserting that she improperly added and decided his appeal under G.L. c. 151A, § 25(a). Since the original determination disqualified him under G.L. c. 151A, § 24(b), he argues that his eligibility is limited to that section of law.

The claimant’s right to appeal the disqualifying determination, as well as the conduct of his first level unemployment appeal hearing, are prescribed under G.L. c. 151A, § 39(b), which states, in relevant part, as follows:

The manner in which disputed claims shall be presented, and the conduct of the hearings, shall be in accordance with chapter thirty A, and such other procedures as prescribed by the commissioner which are not inconsistent with chapter thirty A. Such procedures shall include provisions for the following:

- (1) reasonable notice of the time and place of the hearing to all parties in order to permit adequate preparation;
- (2) notice of the issues to be considered thereat;

² This statement appears on page 11 of the Guide, entered into the record as Remand Exhibit 23. Although not explicitly incorporated into the review examiner’s findings, Remand Exhibit 23 and Remand Exhibit 24, noted below, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

³ *See* Remand Exhibit 24.

⁴ *See* Remand Exhibit 25, page 15. This is also part of the unchallenged evidence in the record.

- (3) the right of representation by an agent, counsel, or advocate;
- (4) the right to produce evidence and offer testimony, examine and cross-examine witnesses; . . .

The decision of the commissioner or his authorized representative shall be based solely on the testimony, evidence, materials and issues introduced at the hearing. . . .

There is nothing in G.L. c. 151A, § 39(b), or in the regulations that govern unemployment appeal proceedings under G.L. c. 30A, that restricts a review examiner's authority in an appeal decision to the adjudicator's basis for the underlying eligibility determination. *See* 801 CMR 1.02.

In this case, the original determination disqualified the claimant pursuant to G.L. c. 151A, § 24(b), on the ground that he traveled out of the country to look for work without a reasonable prospect for such work. As discussed above, this is factually inaccurate. The claimant pointed this error out in his request for a hearing. His hearing request also indicated that he traveled out of the country prior to his discharge and remained out of the country during the period that he filed and certified for benefits. We can reasonably infer that, because of these factual allegations, the DUA hearings department added a second section of law to be heard at the claimant's hearing, G.L. c. 151A, § 25(a).⁵

The Legislature has charged the DUA with conducting such inquiries and investigations as it deems necessary in order to determine whether a claim for unemployment benefits is valid. *See* G.L. c. 151A, § 39(a). Of course, if it is a new basis for potential disqualification, principles of due process dictate that the claimant be provided notice and an opportunity to be heard. Dusenbery v. United States, 534 U.S. 161, 167 (2002) (the Due Process Clause of the Fourteenth Amendment prohibits the States from depriving any person of property without providing notice and an opportunity to be heard); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (due process requires "notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.") (further citations omitted).

Because the claimant's hearing request included statements which indicated that he may not have been complying with the DUA's filing and registration requirements, the DUA hearings department properly included the additional basis for potential disqualification under G.L. c. 151A, § 25(a), as an issue to be heard in this case. *See* G.L. c. 151A, § 39(b); and 801 CMR 1.02(10)(c). Since this separate section of law has appeared on each of the DUA's hearing notices, we see no violation of the claimant's due process rights.

We also consider the claimant's argument that he may not be disqualified under G.L. c. 151A, § 25(a), because he has already been determined eligible under G.L. c. 151A, § 25. He is referring

⁵ *See* Remand Exhibit 12, p. 7, which is the DUA's Notice of Disqualification, dated Sept. 30, 2021. *See also* the claimant's hearing request, Remand Exhibit 12, p. 15–16, and the Notices of Hearing found in Remand Exhibit 12, pp. 25–35, and Remand Exhibit 35. While the claimant contests the merits of the original disqualification, he does not challenge that these exhibits say what they say. Thus, the statement contained in these documents are properly referenced in our decision.

to the DUA's determination in Issue ID # 0071 7134 15, dated October 8, 2021, a portion of which he included with his Board of Review Appeal.⁶

G.L. c. 151A, § 25, Disqualification for Benefits, is one of the longer sections of the unemployment statute with numerous subsections. Each subsection refers to a separate basis for potential disqualification from receiving benefits. The determination in Issue ID # 0071 7134 15 provides that, because the claimant's discharge from employment was not attributable to deliberate misconduct in wilful disregard of the employer's interest or for a knowing violation of a reasonable and uniformly enforced policy, he is approved under G.L. c. 151A, § 25(e)(2). The Notice of Approval further states, "The claimant is eligible to receive benefits beginning 7/25/2021 *as long as all other eligibility requirements are met.*" (Emphasis added). The case before us presents the question as to whether the claimant met the eligibility requirements under the separate subsection (a) of G.L. c. 151A, § 25. Our decision as to whether the claimant met the eligibility requirements under subsection (a) is wholly independent of the outcome of the DUA's determination under subsection (e)(2).

The claimant further argues that the DUA is not upholding G.L. c. 151A, § 74, the statutory language to construe the unemployment law liberally and in aid of its purpose to lighten the burden which falls on the unemployed worker and his family. This is not a legislative directive to ignore the rest of the statute. Nor is it a reason to discard the prohibition against filing and certifying from outside the U.S.

As stated in the prior Board decisions referenced in the claimant's appeal, the reason for limiting claims to those physically present in the United States or Canada is linked to the DUA's ability to supervise claims, as required under federal law. *See Hall v. Dir. of Division of Unemployment Assistance*, No. 12-P-948, 2013 WL 757802 (Mass. App. Ct. Mar. 1, 2013), *summary decision pursuant to rule 1:28* (disqualifying a claimant, who returned to his permanent home in Jamaica after a one-year teaching appointment in Massachusetts, pursuant to G.L. c. 151A, § 25(a) and DUA policy). The unemployment system is highly structured and regulated. Under federal law, the DUA must maintain an income and eligibility verification system so that it can verify continued eligibility for benefits and the amount of compensation payable to the claimant.⁷ Employers are required to report wages to the state agencies that administer the unemployment program.⁸ Those agencies must participate in the income and verification system⁹, which provides for sharing of wage information between state agencies, the Internal Revenue Service (IRS), and the Social Security Administration (SSA)¹⁰. State agencies are further required to cross match quarterly wage information with unemployment benefit payments to the extent such information is likely to detect incorrect payments.¹¹

The claimant asserts that the DUA is misinterpreting federal law and attaches several administrative law decisions, or portions of administrative law judge decisions, from New York State. Even if we were bound by such New York State rulings, which we are not, we see nothing

⁶ See Remand Exhibit 21, p. 7.

⁷ See 42 U.S.C. § 1320b-7(a) and (b)(3).

⁸ 42 U.S.C. § 1320b-7(a)(3).

⁹ 42 U.S.C. § 1320b-7(b)(3).

¹⁰ 42 U.S.C. § 1320b-7(a)(2).

¹¹ 20 C.F.R. § 603.23(b).

in these cases which contradicts our ruling that, under the circumstances presented, the claimant is ineligible for regular unemployment benefits because he has filed and certified for those benefits from Panama without good cause.

Finally, we decline to address the claimant's concerns about his requested dependency allowances, as those issues are not before us. Upon receipt of the DUA's determinations related to dependence allowances, the claimant has a right to file requests for a hearing.

We, therefore, conclude as a matter of law that the claimant has not shown good cause for his failure to comply with the DUA's filing and registration requirements within the meaning of G.L. c. 151A, § 25(a).

The review examiner's decision is affirmed. The claimant is denied benefits as of the week beginning July 25, 2021, and for subsequent weeks, until such time as he has met the requirements of G.L. c. 151A.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 29, 2022



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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

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