

The claimant asserted he could not figure out how to complete his RESEA review. Held he did not demonstrate that his failure to comply with this requirement was due to circumstances beyond his control, where he tried calling DUA only several times over a six-month period, and still did not attempt to reschedule the missed review when he spoke to a DUA representative. Pursuant to G.L. c. 151A, § 25(a), the claimant is ineligible for benefits until he subsequently completed his RESEA review.

**Board of Review
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Issue ID: 0073 8900 05

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. Benefits were denied on the ground that the claimant failed to attend the Reemployment Services and Eligibility Assessments (RESEA) review meeting by the deadline without good cause and, thus, he was disqualified under G.L. c. 151A, § 25(a).

The claimant had filed a claim for unemployment benefits, effective August 29, 2021, which was initially approved. However, in a determination issued by the agency on November 15, 2021, he was denied benefits beginning November 7, 2021. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on June 2, 2022. The claimant sought review by the Board, which dismissed the appeal due to lack of jurisdiction¹, and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On October 20, 2022, the District Court ordered the Board to review the case on the merits. Consistent with this order, we have reviewed the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, and the District Court's Order.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's failure to timely complete a scheduled November 12, 2021, RESEA review was not due to circumstances beyond his control, 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 had filed his appeal with the Board beyond the statutory 30-day appeal period under G.L. c. 151A, § 40.

1. The claimant opened an unemployment claim having an effective date of 8/29/2021. The claimant elected to receive information electronically.
2. On 10/12/2021, the Department of Unemployment Assistance (DUA) sent the claimant a letter (the RESEA letter) informing him he needed to complete a final RESEA review by 11/12/2021.
3. The RESEA letter was both mailed and sent to the claimant electronically. The electronic version of the letter automatically goes into the claimant's UI Online Inbox.
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 read the RESEA letter on or about 11/1/2021.
6. The claimant testified he had issues trying completed his RESEA review online.
7. The claimant did not speak with a customer service representative until 4/22/2021 about his RESEA review and the claimant filed an appeal.
8. The claimant still has not completed the final RESEA review.

Ruling of the Board

In accordance with our statutory obligation and the District Court's order, 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 to note as follows. We accept Finding of Fact # 8 only insofar as it was accurate at the time of the hearing. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we affirm the review examiner's legal conclusion that the claimant was disqualified from receiving benefits, but only until he finally completed his RESEA review.

The review examiner disqualified the claimant for failing to meet the requirements set forth 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.

Specifically, he concluded that the claimant failed to meet the DUA's requirement that he complete a RESEA review. Those regulations are found under 430 CMR 4.01, which provide, 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(g^{1/2}); 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.

The findings provide that the claimant was aware of his obligation to complete the RESEA review prior to the scheduled deadline of November 12, 2021, but that he had issues when he tried to complete the review online. *See Findings of Fact ## 2, 5, and 6.* During the hearing, the claimant testified that, although he is savvy on the computer, he could not understand what he was supposed to do. He further testified that he called the DUA several times and never got through, eventually

reaching someone at DUA in April, 2022.² Specifically, he spoke with a DUA customer service representative on April 22, 2022, and then requested a hearing on the disqualifying determination. *See* Finding of Fact # 7.

The review examiner considered whether the claimant had been unable to meet the RESEA review requirement due to circumstances beyond his control as meant under 430 CMR 4.01(8)(b)(9) and concluded that he did not. We agree.

At the time of the hearing, the claimant had still not completed his RESEA review. Finding of Fact # 8. The hearing was held on May 31, 2022, more than six months after the scheduled November 12, 2021, deadline. Even if we thought that the claimant's attempt to contact a DUA representative for assistance "several times" over that period demonstrated due diligence, which we do not, nothing in the record shows that, when he finally contacted DUA in April, he made an effort to reschedule the RESEA review. At the time that the review examiner rendered his decision, he correctly concluded that the claimant had not shown that his inability to fulfill his RESEA requirements were due to circumstances beyond his control.

However, we note that the Department of Career Services' Massachusetts One Stop Employment Services (MOSES) system shows that the claimant did finally complete his RESEA review on June 24, 2022. Having finally completed his RESEA obligation, we have placed an end date on the disqualification as of the week ending June 25, 2022.

We, therefore, conclude as a matter of law that the claimant did not have good cause for his failure meet the DUA's registration and filing requirements under G.L. c. 151A, § 25(a), until he completed his RESEA review.

² 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).

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the period November 7, 2021, through June 25, 2022. He is entitled to benefits for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 25, 2023



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

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