

The claimant had good cause for his failure to complete the initial RESEA by the deadline, as he lacked childcare due to an emergency, and his girlfriend's illness and hospitalization. He may not be disqualified pursuant to G.L. c. 151A, § 25(a).

**Board of Review
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Issue ID: 0075 5337 40

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 reverse.

The claimant filed a claim for unemployment benefits with the DUA, effective on December 5, 2021. On February 22, 2022, the DUA issued a determination denying benefits for one week. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on May 14, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to complete the initial Reemployment Services Eligibility Assessment (RESEA) requirements without good cause and, thus, was disqualified under G.L. c. 151A, § 25(a). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the case for review. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner's decision, which concluded that the claimant was disqualified under G.L. c. 151A, § 25(a), because he failed to complete the initial RESEA without good cause, is supported by substantial and credible evidence and is free from error of law, where the findings show that the claimant's failure to complete this RESEA requirement by the deadline resulted from his lack of childcare.

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 12/5/2021. The claimant elected to receive information electronically.
2. On 1/31/2022, the Department of Unemployment Assistance (DUA) mailed the claimant a letter (hereafter referred to as the RESEA letter) informing him he

must complete a career center seminar and initial RESEA meeting by 2/18/2022.

3. The RESEA letter also indicates [that] the claimant was to have completed a final RESEA review by two weeks after the deadline for the seminar.
4. 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 Inbox.
5. The RESEA letter was entitled [sic] **MANDATORY PARTICIPATION TO KEEP YOUR UNEMPLOYMENT BENEFITS** (emphasis in original) and stated, in part: "Failure to participate in required activities without good cause will cause you to lose Unemployment Benefits."
6. The claimant learned of the RESEA letter on or about 1/31/2022.
7. The claimant did not complete their [sic] Initial RESEA on time because he is not a tech savvy person and his girlfriend, who had been helping him, was not available at the time of the letter because she was sick in the hospital for three weeks with [COVID]-19.
8. The claimant had to care for his newborn baby on his own, while his girlfriend was sick in the hospital in February, at the time he received the letter.
9. On March 9, 2022, the claimant attended a Career Center Seminar. The claimant never followed up with the One Stop Career Center to complete his Initial RESEA and RESEA Review.
10. The claimant has not completed his Initial RESEA or his 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 original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant did not have good cause for his failure to complete the initial RESEA by the deadline.

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.

Also relevant in this appeal are the following DUA regulations, which pertain to mandatory participation in RESEA services. 430 CMR 4.01 provides, 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.

Additionally, 430 CMR 4.04(7)(c) instructs that the DUA shall apply the “reasonable person” test in determining whether just cause exists for failure to participate.

Pursuant to 430 CMR 4.01, a claimant may establish good cause for his failure to complete the RESEA requirements by the deadline and, therefore, be entitled to benefits during the week(s) in which such good cause exists. Here, the review examiner found that the claimant could not complete the initial RESEA review by the deadline of February 18, 2022, because his girlfriend

was in the hospital and not available to help the claimant, who lacked the necessary computer skills to complete the RESEA on his own. *See* Finding of Fact # 7. Because it is unknown on this record whether the claimant’s girlfriend was a member of his household, we cannot find that her illness gave him good cause under 430 CMR 4.01(8)(b)(2).

However, pursuant to 430 CMR 4.01(8)(b)(3), an emergency family care issue would establish good cause, provided that the claimant made attempts to secure family care in order to complete the required RESEA activities. Here, the review examiner found that the claimant lacked childcare for his newborn child while his girlfriend was in the hospital, a time period which overlapped with the initial RESEA’s deadline and the weeks leading up to it. *See* Finding of Fact # 8. The claimant also testified that taking care of his child during this time made it hard for him to figure things out.¹ The finding that the claimant had to care for his newborn child “on his own” indicates that the claimant did not have anyone else available to help him. Based on this circumstance, the claimant has established good cause under the regulations for his failure to complete the initial RESEA by the February 18th deadline.

We, therefore, conclude as a matter of law that the claimant had good cause for his failure to complete the initial RESEA by the deadline, as meant under G.L. c. 151A, § 25(a).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week ending February 19, 2022, if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 28, 2022



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

¹ 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).

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.

SVL/rh