

**The claimant, who is hearing impaired, is unable to communicate adequately via telephone. Because the DUA only offered assistance by phone, the claimant was unable to understand the obligations required of him in order to complete his RESEA review. He was also delayed in completing his RESEA review because he underwent surgery. Both issues constitute good cause for failing to complete his RESEA review in a timely manner. Since he subsequently completed the RESEA review, he may not be disqualified under G.L. c. 151A, § 25(a).**

**Board of Review  
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**Issue ID: 0076 1626 39**

### 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 January 9, 2022. On April 20, 2022, the DUA issued a Notice of Disqualification providing that the claimant was ineligible for benefits beginning the week of March 27, 2022, after he failed to attend a RESEA review meeting by the April 1, 2022, deadline. 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 for the period between March 27, 2022, and May 17, 2022, in a decision rendered on June 30, 2022. We accepted the claimant's application for review.

Benefits were denied during this period after the review examiner determined that the claimant failed to attend the RESEA review meeting by the deadline 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 remanded the case to the review examiner to obtain additional information pertaining to the reason the claimant was delayed in completing his RESEA requirements. The claimant attended the remand hearing. Thereafter, the review examiner issued his 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 that the claimant did not have good cause for failing to attend a RESEA review meeting by the deadline because he knew of his obligations by the time he attended an initial RESEA seminar on March 28, 2022, 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. On February 28, 2022, the Department of Unemployment Assistance (DUA) issued a notice of the Reemployment Services and Eligibility Assessment program, with a seminar due date of March 18, 2022, and a review deadline of April 1, 2022.
2. The claimant received the notice.
3. The claimant did not understand his obligations and attempted to contact DUA.
4. The claimant did not understand how to navigate his claim online.
5. The claimant attempted to contact DUA. The only method of communication was by phone. The claimant is hard of hearing and relies on lip reading when communicating. He was not able to understand DUAs instructions over the phone.
6. The claimant did not attend the seminar or an initial review by March 18, 2022.
7. The claimant began the seminars on March 28, 2022.
8. The claimant did not receive credit for seminars he attended on March 28, 2022 because he did not know his MassHire ID Number.
9. On April 4, 2022, DUA issued a Notice of Disqualification for failing to complete the review activities as required.
10. The claimant emailed his MassHire employment counselor on April 4, 2022 about receiving credit for the March 28, 2022 seminar.
11. On April 14, 2022, the claimant emailed his MassHire employment counselor about meeting in person because he was hard of hearing and could communicate easier in person rather than the phone. The claimant was not able to schedule an in-person meeting.
12. The claimant attempted to contact DUA via phone to get assistance with his claim.
13. On April 21, 2022, the claimant emailed his MassHire Employment counselor about his conversations with DUA and receiving credit for his March 28, 2022 seminar. The claimant requested to meet with the employment counselor in person. The employment counselor could not schedule in-person meetings at that time.

14. On or around May 10, 2022, the claimant was able to schedule a virtual initial review with the employment counselor for May 17, 2022.

15. The claimant attended an initial review on May 17, 2022.

Credibility Assessment:

The claimant provided additional documentary evidence as remand exhibits in the form of emails with the MassHire counselor. The claimant testified that he had other communications with the MassHire counselor prior to the date of the emails that were provided. The claimant, while disorganized and technologically unsavvy, provided credible testimony to the best of his memory.

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 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 further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant did not provide good cause for failing to complete his RESEA review by the applicable deadline.

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<sup>1/2</sup>); 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.

There is no question that the claimant missed the original April 1, 2022, DUA deadline for his attendance at a RESEA Review. Consolidated Findings ## 1, 6, and 15. In the normal course, failure to meet that deadline results in a disqualification for benefits, unless the individual has good cause for failing to attend the review session. 430 CMR 4.01(8)(a).

We believe that the review examiner erred in concluding that the claimant did not have good cause for failing to complete his RESEA review by the April 1, 2022, deadline. The claimant, who is hearing impaired and relies on lip reading in conversation, was already delayed in completing his initial RESEA seminar, because the DUA was not adequately equipped to accommodate the claimant’s communications needs. *See* Consolidated Findings ## 3–7. He did complete his initial review on March 28, 2022. Consolidated Finding # 7. However, he was further delayed in completing the RESEA review because he underwent surgery to remove a tumor soon after completing his initial RESEA seminar.<sup>1</sup>

Moreover, the claimant continued to have substantial difficulties communicating with the DUA due to the agency’s limitations in accommodating his hearing impairment. When he was unable to get the information he needed via email, his only alternative was to call the DUA, a

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<sup>1</sup> The claimant’s uncontested testimony in this regard 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).

communication method that was demonstrably unproductive for the claimant. Consolidated Findings ## 10, 11, and 12. He repeatedly requested in-person meetings to address these communication issues and fulfill his requirements but was told counselors could not meet in-person because of the COVID-19 pandemic. See Consolidated Finding ## 11 and 13. As the claimant's participation in a RESEA review was delayed by a combination of the DUA's technical and physical limitations and the claimant's need to undergo a surgical procedure, we believe he has presented good cause pursuant to 430 CMR 4.01(8)(a)(5) and (9) for his failure to complete the RESEA review by the April 1, 2022, deadline.

After many attempts to set up a review that met his specific needs, the claimant was finally able to attend the RESEA review on May 17, 2022. Consolidated Findings ## 14 and 15. He, therefore, met all of his RESEA obligations as of that date.

Since the claimant had good cause to miss his RESEA review deadline, and he thereafter attended a rescheduled review session, we conclude as a matter of law that he may not be disqualified under G.L. c. 151A, § 25(a).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period between March 28, 2022, and May 21, 2022, and for subsequent weeks 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](http://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.

LSW/rh