

Technical issues experienced by the Career Center delayed the claimant's ability to complete her RESEA review on time. As these issues were outside the claimant's control, she had good cause for failing to meet her RESEA review deadline. Because the claimant completed the RESEA review immediately after the issues were resolved, she may not be disqualified under G.L. c. 151A, § 25(a).

**Board of Review
19 Staniford St., 4th 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: 0078 0313 64

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 June 12, 2022, which was approved. However, in a determination issued on August 15, 2022, the DUA disqualified her from receiving benefits as of August 7, 2022, until she attended a Reemployment Services and Eligibility Assessment (RESEA) review meeting. 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 as of August 7, 2022, in a decision rendered on September 20, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not show good cause for failing to complete her RESEA review by the assigned deadline, and, therefore, she 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 evidence pertaining to the reason the claimant did not complete her RESEA review in a timely manner. 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 the claimant was not entitled to benefits because she had not completed her RESEA review by the deadline and did not have good cause for failing to complete the review in a timely manner, 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 filed for unemployment benefits effective June 12, 2022.
2. On July 11, 2022, the Department of Unemployment Assistance (DUA) issued the claimant a notice of the requirement to attend a seminar and a follow up review to continue to receive unemployment benefits. The seminar deadline was July 29, 2022. The review deadline was August 12, 2022.
3. On July 11, 2022, the claimant received the notice electronically and understood the requirement.
4. The claimant attended the seminar on July 25, 2022. The claimant emailed her paperwork relating to the seminar to the career center, which was received on August 2, 2022.
5. On August 15, 2022, the DUA issued the claimant a Notice of Disqualification for failing to attend the review by the deadline and disqualifying her from receiving benefits from August 7, 2022, and indefinitely thereafter until she satisfied the RESEA requirements.
6. On or before August 12, 2022, the claimant submitted her RESEA Review documentation by electronic communication and certified mail.
7. The claimant was unable to complete her RESEA Review by the August 12, 2022 deadline because the career center did not enter the RESEA Review documentation on claimant's MOSES record until September 23, 2022.
8. The claimant returned to work on September 12, 2022. The claimant's return to work did not interfere with the completion of her RESEA review.
9. The claimant completed the RESEA review on September 20, 2022 and was marked as completing the status review on September 23, 2022.

[Credibility] Assessment:

At the beginning of the hearing, the documents submitted by the claimant were entered into the record. The claimant's testimony was highly credible throughout the hearing and supported by documentation submitted for the remand hearing. The claimant's testimony and UI email documentation reflect the diligence of the claimant is the timely communication with UI personnel and compliance with the RESEA requirements as set forth in the UI letter dated July 11, 2022.

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 was not entitled to benefits as of August 7, 2022.

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 she 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.

As an initial matter, there is no question that the claimant met the July 29, 2022, deadline for completing her initial RESEA seminar. *See* Consolidated Findings ## 2 and 4. However, DUA records indicated that the claimant had not completed her RESEA review by the August 12, 2022, deadline. In the normal course, failure to meet this deadline results in a disqualification for benefits, unless the individual has good cause for failing to attend the follow-up review session. 430 CMR 4.01(8)(a).

In this case, the record indicates that the claimant intended to and attempted to complete her RESEA review by the August 12, 2022, deadline. Consolidated Finding # 6. While she submitted all the requisite paperwork and information prior to the August 12th deadline, for an unknown reason, the Career Center did not receive and process this information in a timely manner. Consolidated Finding # 7. Accordingly, as the record indicates that the claimant was unable to complete her RESEA review before the applicable deadline as a result of circumstances outside of her control, we believe she articulated good cause within the meaning of 430 CMR 4.01(b)(9) for failing to complete her RESEA Review.

The claimant was able to complete and receive credit for her RESEA Review on September 23, 2022, once the Career Center had and processed the paperwork and information provided by the claimant. Consolidated Finding # 9.

Since the claimant demonstrated good cause for missing the deadline to complete her RESEA review, and she thereafter completed her RESEA Review as soon as she was able, we conclude as a matter of law that she 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 week beginning August 7, 2022, and for subsequent weeks if otherwise eligible.

N.B.: The record indicates that the claimant returned to work on or about September 12, 2022. For this reason, we are asking the agency to investigate the claimant's eligibility for benefits under the provisions of G.L. c. 151A, §§ 29 and 1(r) as of that date.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 23, 2022



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.

LSW/rh