

While sick with COVID-19, the claimant had good cause to miss his RESEA review deadline and was eligible for benefits pursuant to 430 CMR 4.01(8)(b). However, he is denied benefits after he recovered and until he finally attained his RESEA review.

**Board of Review
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Issue ID: 0078 4251 99

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 we affirm in part and reverse in part.

The claimant filed a claim for unemployment benefits with the DUA, effective August 14, 2022, which was approved. However, in a determination issued on October 17, 2022, the DUA disqualified the claimant beginning October 9, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's determination and denied benefits in a decision rendered on November 23, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to complete the Reemployment Services Eligibility Assessment (RESEA) requirements without good cause, and, thus, he was disqualified under G.L. c. 151A, § 25(a). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, as well as the claimant's appeal and information contained in the agency's Massachusetts One-Stop Employment System (MOSES).

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not present good cause to miss his RESEA review deadline, is supported by substantial and credible evidence and is free from error of law, where, during the deadline week, he had been unable to reach agency personnel and was also sick with COVID-19 for two weeks.

Findings of Fact

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

1. The claimant opened an unemployment claim having an effective date of 8/14/2022. The claimant elected to receive information electronically.
2. On 9/11/2022, 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 10/14/2022.

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 9/12/2022.
6. The claimant was unable to complete his RESEA [review] on time because the claimant signed up for the [seminar] on 10/14/2022, but when he signed on, he was disconnected and was not able to sign back on. He called the career center, but no one responded to him. He called the career center for about two or three days.
7. The claimant was sick with [COVID-19] during the second week of October 2022 and was sick for two weeks.
8. The claimant is hearing impaired, needs his wife to be present when completing the tasks.
9. The claimant has not completed any of his required RESEA tasks.

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 conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. We accept Finding of Fact # 9 only insofar as it reflects the status of the claimant's RESEA tasks on the date of the hearing, November 4, 2022. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we do not agree that the claimant is ineligible for benefits during the period October 9–22, 2022.

The claimant was denied benefits due to his failure to complete the final RESEA review by the assigned deadline, which DUA required in order for him to continue receiving unemployment benefits. *See* Findings of Fact ## 2 and 4. We analyze his eligibility 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.

Also relevant are the following DUA regulations, which pertain to 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.

On or about September 12, 2022, the claimant saw the RESEA notice, which informed him that he had to complete his RESEA review by October 14, 2022. Findings of Fact ## 2 and 5. Thus, he had almost a month to take the necessary steps to meet this deadline. Apparently, he was taking the preliminary steps toward the RESEA review, as he attempted to participate in a Career Center seminar on October 14, 2022, but could not complete the seminar that day, as he was disconnected. The record further shows that he tried to reach someone at the Career Center for two or three days without success. *See* Finding of Fact # 6. Meanwhile, he was also sick with COVID-19 for two weeks, starting the second week of October. Finding of Fact # 7. In our view, this combination

of illness, technical problems, and the inability to get assistance from the Career Center constitute good cause for not completing the RESEA review on time. *See* 430 CMR 4.01(8)(b)(2) and (9).

However, the findings indicate that the claimant's two-week bout with COVID-19 started the second week of October. This means he was ill only during the weeks beginning October 9, 2022, and October 16, 2022. Nothing in the record suggests that the claimant attempted to reach out to the Career Center during the week beginning October 23, 2022, and he had not done so as of the hearing, which was held at the end of the following week. *See* Finding of Fact # 9.

Information in the agency's Massachusetts One-Stop Employment System shows that the claimant finally attained his RESEA review on November 29, 2022. Upon completing this requirement, he met the DUA's registration and filing requirements, and he became eligible to resume receiving benefits as of the week beginning November 27, 2022.

We, therefore, conclude as a matter of law that the claimant may not be disqualified for the week in which his RESEA review was to be completed and the following week, as he demonstrated good cause for failure to meet the deadline as meant under G.L. c. 151A, § 25(a), and 430 CMR 4.01(8)(a) and (b)(2) and (9). We further conclude that he did not meet his burden to show good cause over the course of the next several weeks, and he is ineligible for benefits until he completed his RESEA review.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits for the period October 9–22, 2022, if otherwise eligible. He is denied benefits for the period October 23, 2022, through November 26, 2022.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 20, 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