

Where the claimant followed the explicit directions provided in the MassHire RESEA letter and a MassHire representative's email, but could not get a response to his multiple requests to schedule his initial or final RESEA reviews, held he demonstrated good cause for failure to meet the assigned deadlines due to circumstances beyond his control. The claimant may not be disqualified pursuant to G.L. c. 151A, § 25(a).

**Board of Review
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Issue ID: 0078 7088 74

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 October 2, 2022, which was approved. However, in a determination issued on December 5, 2022, the DUA disqualified the claimant beginning November 27, 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 January 25, 2023. 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, 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 render subsidiary findings of fact pertaining to communications between the claimant and MassHire Career Center staff. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record, as well as 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 demonstrate good cause for his failure to schedule his RESEA reviews by the assigned deadlines, 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 a claim for Unemployment Assistance (UI) benefits with an effective date of 10/2/22.
2. The claimant elected to receive information electronically.
3. On 10/31/2022, 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 11/18/2022 and his Final RESEA Review by 12/2/22.
4. DUA sent the RESEA letter to the claimant electronically and via U.S. mail. The claimant received the RESEA letter when it was properly placed in his UI Inbox on 10/31/22.
5. The RESEA letter was entitled 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 RESEA letter states that the claimant can schedule the Career Center Seminar online, but that a MassHire Career Center staff person will schedule the claimant for an Initial RESEA meeting and follow-up RESEA Review meeting.
7. The claimant read the RESEA letter shortly after it was issued. The claimant scheduled and attended the Career Center Seminar at a MassHire Career Center on 11/1/22, where he was advised of the requirements of the program.
8. The claimant received an email from MassHire on 11/1/22 reminding him of the need to schedule the required events by the deadlines set forth in the RESEA letter. In the email dated November 1, 2022, a MassHire employee named [A] ([A]) wrote, “Your Initial RESEA review “needs” to be scheduled. I will call you to schedule OR Please call me [phone number] or email me back to do this...there are deadlines. At the initial meeting, we will work together on developing the goals to successfully complete the program.”
9. [A] called the claimant on 11/7/22 to remind him of the need to complete the required RESEA events.
10. The claimant did not see the 11/1/22 email until 11/7/22. The claimant sent an email to MassHire on 11/7/22 asking them to schedule the remaining required events. The claimant did not receive a phone call or an email from MassHire in response to this email.
11. The claimant sent a follow-up email to MassHire on 11/25/22 stating that he wanted to schedule the remaining events. He did not receive a response to the email.

12. The claimant called the MassHire number provided to him several times between 11/25/22 and 12/2/22. He was not able to reach anyone at the career center.
13. The claimant did not schedule the required events or complete the required tasks after he completed the Career Center seminar because he was unable to reach Susan or anyone else at the MassHire Career Center.
14. On 12/7/22, the DUA issued a Notice of Disqualification to the claimant determining the claimant did not meet the filing requirements of the Law and therefore was disqualified for the week beginning 11/27/22 and indefinitely thereafter until he attains his Final RESEA Review.
15. The claimant appealed that Notice on 12/7/22.
16. As of 1/23/23, the claimant had not completed the RESEA review.

Credibility Assessment:

The claimant directly and credibly testified to his efforts to complete the RESEA program. His testimony as a whole is accepted and credited.

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 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 disagree with the review examiner's legal conclusion that the claimant failed to demonstrate good cause for not timely completing his RESEA requirements.

The claimant was denied benefits due to his failure to complete the initial and final RESEA reviews, which DUA required in order to continue receiving unemployment benefits. *See* Consolidated Finding # 5. 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 $\frac{1}{2}$); 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.

In this case, the consolidated findings show that the claimant received a RESEA letter on October 31, 2022, requiring him to attend a Career Center seminar and initial RESEA review by November 18, 2022, and to complete his final RESEA review by December 2, 2022. Consolidated Findings ## 3 and 4. He attended the initial reemployment Career Center services seminar the next day, on November 1, 2022. Consolidated Finding # 7. However, he did not meet the deadlines for the initial RESEA review or the final RESEA review. *See* Consolidated Findings ## 13 and 16. The review examiner concluded that the claimant did not have good cause for failing to meet those deadlines, because he did not use the MassHire website to schedule the initial and final RESEA reviews. We disagree.

After remand, the consolidated findings include more detail about the Career Center instructions for meeting his RESEA obligations, including what he was told and by what means he was to do this. The RESEA letter stated that he could go online to schedule the seminar, but that a MassHire Career Center staff person would schedule the initial and final RESEA reviews. Consolidated Finding # 6. After completing the seminar, he received an email from a MassHire representative on November 1, 2022, instructing him to call her at a given telephone number or email her to schedule the reviews. Consolidated Finding # 8. Nothing in the RESEA letter or this MassHire staff person's email advised him to use the MassHire website to schedule the initial or final review. See Consolidated Findings ## 6, 8, and Exhibit 1.

Instead, the consolidated findings show that the claimant diligently attempted to follow the MassHire representative's instructions for scheduling the initial and final RESEA reviews before the deadlines, November 18 and December 2, 2022, respectively. On November 7, 2022, he sent an email to MassHire to schedule the reviews. Consolidated Finding # 10. When he did not get a response, he sent a follow-up email on November 25, 2022, but again received no response. Consolidated Finding # 11. He then tried calling the MassHire telephone number provided several times between November 25 and December 2, 2022, but could not reach anyone. Consolidated Finding # 12. In our view, these findings show that he made a good faith effort to timely meet his RESEA obligations and that his inability to meet the deadlines was due to circumstances beyond his control.¹

We, therefore, conclude as a matter of law that the claimant had good cause for his failure to complete the initial and final RESEA reviews by the assigned deadlines, as meant under G.L. c. 151A, § 25(a), and 430 CMR 4.01(8)(a) and (b)(9).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning December 3, 2022, and for subsequent weeks, if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 29, 2023



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.

¹ We note that entries in the MOSES system show that the claimant completed his initial RESEA review on March 15, 2023, and the final RESEA review on March 16, 2023.

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