

The claimant had good cause under 430 CMR 4.01(8)(a) for not completing his initial RESEA seminar by the deadline. His account was hacked, and his contact information was changed before the RESEA notice was issued. Further, he did not regain access to his account until after the deadline had elapsed because the DUA required him to re-verify his identity before restoring his access to UI Online. Therefore, he missed the deadline as a result of circumstances beyond his control.

**Board of Review
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Issue ID: 0078 8094 82

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 separated from employment and filed a claim for unemployment benefits, effective November 6, 2022, which was approved. However, in a determination issued on December 19, 2022, the DUA disqualified him from receiving benefits for the week of December 11, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination and denied benefits for the week beginning December 11, 2022, in a decision rendered on January 18, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not articulate good cause for failing to complete his initial Reemployment Services and Eligibility Assessment (RESEA) meeting, 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, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not have good cause for missing the deadline for his initial RESEA seminar, because he unreasonably delayed correcting a technical issue with his UI Online account and also received a copy of the RESEA letter in the mail, is supported by substantial and credible evidence and is free from error of law.

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 11/6/2022. The claimant elected to receive information electronically.

2. On 11/28/2022, 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 12/16/2022 and his Final RESEA Review by 12/30/22.
3. 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 Online Inbox on 11/28/22.
4. 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.”
5. The claimant saw the RESEA when he received it in the mail. The claimant does not remember when he received it, but it was after both deadlines had passed. The claimant has not had any issues with mail delivery at his home.
6. The claimant was locked out of his account until the week beginning 1/1/23 when he was assisted by a DUA agent. He has scheduled his orientation with MassHire for 1/24/23.
7. On 12/19/22 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 12/11/22.
8. The claimant appealed that Notice.

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 reject Finding of Fact # 5 as inconsistent with the evidence of record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, we believe the review examiner erred in denying the claimant benefits.

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, she concluded that the claimant failed to meet the DUA's requirement that he complete an initial RESEA meeting. Those requirements 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 $\frac{1}{2}$); 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.

There is no question that the claimant missed the December 16, 2022, deadline for his attendance at an initial RESEA seminar. Findings of Fact ## 2 and 6. 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). Upon review of the record, we believe that the review examiner erred in concluding that the claimant did not have good cause for failing to complete his initial RESEA seminar by the applicable deadline.

While not explicitly incorporated into the review examiner's findings of fact, the claimant's uncontested testimony was that he was temporarily unable to access correspondence from the DUA, because his account had been hacked and DUA policy required the agency re-verify the claimant's identity before restoring his access to his account.¹ A review of UI Online, the DUA's electronic recordkeeping system, confirms that the claimant's account was compromised on or about November 26, 2022, and the DUA restricted the claimant's access until December 30, 2022, when the agency determined that he had successfully re-verified his identity. Accordingly, agency records confirm that the claimant had lost access to his account prior to November 28, 2022, the day the RESEA letter was issued and did not regain access until after the December 16, 2022, deadline had elapsed. *See* Finding of Fact # 1. As the claimant's delay in accessing his account was a result of his account being compromised, we believe that the record shows that he was unable to access his account as a result of circumstances beyond his control.

The review examiner also found that the claimant did not articulate good cause for missing the December 16th deadline, because she concluded that the record indicated that the claimant timely received a copy of the RESEA letter sent via U.S. Mail. However, the claimant testified at the hearing that he did not think he received the letter via U.S. Mail, as he only learned of the requirements after he regained access to his UI Online profile.² A review of the claimant's UI Online profile confirms that his password and contact information were changed when his account was compromised several days before the RESEA letter was issued. As the DUA's records are consistent with the claimant's recollection that he did not receive the RESEA letter via U.S. Mail, we believe that the review examiner erred in concluding that the claimant had received a copy of the RESEA letter via U.S. Mail.

The DUA's regulation lists a number of circumstances that constitute good cause for not completing the RESEA requirements. Included among them is other circumstances beyond the claimant's control. 430 CMR 4.01(8)(b)(9). Here, the claimant did not receive the RESEA letter because his account was hacked, his contact information was changed before the letter was issued, and DUA security protocols prevented him from accessing his account until after the December 16th deadline had elapsed. Accordingly, we believe that the claimant had good cause for failing to complete his initial RESEA seminar by the December 16, 2022, deadline because of circumstances beyond his control. 430 CMR 4.01(8)(b)(9).

We do note, however, that the issue currently before us pertains only to whether the claimant had good cause for missing the December 16, 2022, deadline. The claimant was issued a separate Notice of Disqualification, in Issue ID # 0078 9190 75, in which the DUA determined that the claimant did not present good cause for failing to meet the December 30, 2022, deadline for completing his RESEA review. This determination found that the claimant ineligible for benefits from December 25, 2022, through February 4, 2022. As this decision is not before the Board, we do not have jurisdiction to assess whether the claimant had good cause for failing to meet the December 30th deadline for completing his RESEA review. Accordingly, our decision can only apply to the period between December 11, 2022, and December 24, 2022, after which the claimant's eligibility is governed by a different issue not currently before the Board.

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).

² The claimant's testimony in this regard is also part of the unchallenged evidence before the review examiner.

We, therefore, conclude as a matter of law that the claimant's inability to access his UI Online account constituted good cause under 430 CMR 4.01(8)(a) to miss the deadline for his initial RESEA seminar. The claimant may not be disqualified under G.L. c. 151A, § 25(a), during the period between December 11, 2022, and December 24, 2022.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period between December 11, 2022, and December 24, 2022, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 30, 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.

LSW/rh