

MOSES records showing the claimant missed an appointment at the end of April 2023 directly detract from his testimony that he made a good faith effort to complete his RESEA requirements immediately after receiving the RESEA letter on April 9, 2023. Held he has not shown good cause under 430 CMR 4.01(8)(a) for failing to timely complete his RESEA review, as required by G.L. c. 151A, § 25(a).

**Board of Review
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Issue ID: 0080 2562 88

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 March 12, 2023, which was approved. However, in a determination issued on May 15, 2023, the DUA disqualified him from receiving benefits as of May 7, 2023, until he 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 modified the agency's initial determination, awarding the claimant benefits through June 17, 2023, but denying him benefits thereafter, in a decision rendered on June 22, 2023. We accepted the claimant's application for review.

Benefits were awarded through June 17, 2023, because the review examiner determined that the claimant had only shown good cause for failing to timely complete his RESEA review through the date of the hearing, and, therefore, was only entitled benefits through June 17, 2023, 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 had shown good cause for failing to complete his RESEA review by the applicable deadline because he made a good faith effort to complete the requirements but could no longer show such good cause after attending the hearing, 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 opened an unemployment claim having an effective date of 3/12/2023. The claimant elected to receive information electronically.
2. On 4/9/2023, 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 5/12/2023.
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 received the RESEA letter when it was properly placed in their [sic] UI online account. He remembers seeing and reading the letter.
6. On 4/12/2023, the claimant called the DUA call center for clarification on how to complete the RESEA tasks. The representative gave him a number to call in order to sign up for the initial RESEA. The claimant immediately called the number and left multiple messages with no call back.
7. On 5/1/2023, the claimant again contacts the DUA call center.
8. On 5/15/2023, the DUA sent the claimant a Notice of Disqualification regarding his RESEA review under Section 25(a) of the law stating he was not entitled to benefits for the week beginning 5/7/2023 and indefinitely until you complete [sic] your RESEA review.
9. After going onto Job Quest, the claimant realizes that he can watch the on-demand seminar, which he does. He watched the seminar three to four weeks prior to the date of the hearing on or around 5/31/2023. He then scheduled his first one on one meeting with a career counselor.
10. The claimant's Initial RESEA is scheduled for 6/30/2023, the first available appointment.
11. The claimant has not been able to schedule his RESEA review until he completes his initial RESEA.

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 # 6 as inconsistent with the evidence of record. In adopting the remaining findings,

we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant had good cause for failing to timely complete his RESEA review.

The review examiner disqualified the claimant beginning June 18, 2023, 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 had shown good cause for failing to meet the DUA's requirement that he timely complete a RESEA review until June 17, 2023, but did not show good cause thereafter. The applicable 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 $\frac{1}{2}$); 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 was no dispute that the claimant had failed to complete his RESEA review as of the date of the hearing. 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).

The review examiner concluded that the claimant had good cause for his failure to attend the RESEA review session by the applicable deadline, May 12, 2023, because he had made a good-faith effort to complete his RESEA requirements. He had called the career center on multiple occasions but had not received any response. Upon review of the record, we do not believe this conclusion is supported by substantial and credible evidence.

The review examiner found the claimant initially contacted the DUA by phone to ask about his RESEA requirements on or about April 12, 2023. Records from the Department of Career Service's Massachusetts One Stop Employment System, which were admitted into evidence as Exhibit 4, show that the claimant was scheduled for, but missed, an appointment at the Career Center which had been scheduled for April 25, 2023.¹ The fact that this appointment was scheduled for the end of April detracts directly from the claimant's testimony that he was unable to successfully contact the Career Center until to the end of May 2023. We believe that the review examiner erred in finding the claimant presented substantial and credible evidence showing he had good cause for failing to timely complete his RESEA review until June 17, 2023.

We, therefore, conclude as a matter of law that the claimant has not shown good cause under 430 CMR 4.01(8)(a) to complete his RESEA review by the applicable deadline, as required by G.L. c. 151A, § 25(a).

We note that the claimant has since completed his RESEA requirements, and the DUA properly set an issue end date of July 8, 2023, for this case.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the weeks between May 7, 2023, and July 8, 2023.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 23, 2023

¹ Exhibit 4 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).



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