

Where the claimant has shown that prior to his deadline for participating in a RESEA seminar, he received a *bona fide* offer for a full-time job, which was to start two weeks later, the Board held he had good cause for his failure to meet the RESEA deadline. He may not be denied benefits pursuant to G.L. c. 151A, § 25(a).

Board of Review
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Issue ID: 0082 8916 60

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 with the DUA, effective March 10, 2024, which was initially approved. However, in a determination issued on June 3, 2024, the DUA denied benefits for the week beginning May 26, 2024. 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 July 6, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not have good cause to miss the deadline for his scheduled Reemployment Services and Eligibility Assessment (RESEA) seminar, and, thus, he 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 consider new documents provided with the claimant's Board appeal and to obtain further evidence about his asserted job offer. Following a remand hearing, 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 did not have good cause to miss his RESEA seminar deadline even though he was starting a new job, 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 March 10, 2024.

2. The claimant elected to receive electronic correspondence and provided his correct email address.
3. On May 1, 2024, and May 10, 2024, the claimant attempted to contact the Department of Unemployment Assistance (DUA) by phone for an unrelated matter. The claimant did not speak to anyone.
4. On May 13, 2024, the DUA issued the claimant a notice to attend a RESEA Career Center Seminar (seminar) by May 31, 2024, in order to continue to receive unemployment benefits. The notice also identified June 14, 2024, as the date by which the claimant had to complete a follow-up review (review).
5. The claimant received the notice electronically in his inbox at the time it was sent.
6. The claimant opened the notice electronically when he received it.
7. On May 13, 2024, the claimant called the DUA call line and did not speak to anyone. The claimant does not remember whether the call was concerning the RESEA requirements or another matter.
8. On May 15, 2024, the claimant was offered new employment by a new employer (the New Employer) in a full-time position pending a background check. The claimant did not have a start date at that time.
9. Because the claimant had new employment secured, the claimant did not believe that he needed to attend the RESEA training. The claimant also believed that he had until June 14, 2024, to complete the training because he misread the letter.
10. On May 24, 2024, May 30, 2024, and twice on May 31, 2024, the claimant called the DUA call line. The claimant did not speak to anyone due to high call volume.
11. The claimant did not contact a career center prior to the deadline and did not attempt to contact a career center prior to the deadline.
12. There was nothing preventing the claimant from attending the seminar prior to May 31, 2024.
13. The claimant did not attend the seminar prior to the deadline.
14. On May 31, 2024 [sic], the claimant passed his background check with the New Employer. The claimant was given a start date of June 3, 2024, for the New Employer.

15. On June 3, 2024, the DUA sent the claimant a Notice of Disqualification for failing to attend the seminar prior to the deadline.
16. On June 7, 2024, the claimant reached out to his state senator's office regarding his unemployment benefits claim.
17. On June 10, 2024, the claimant attended the seminar virtually.
18. On June 14, 2024, the claimant contacted a career center about his return to work. The claimant informed the career center that he had returned to work full-time.

Credibility Assessment:

The claimant attended the remand hearing.

The claimant testified that he attempted to contact the DUA numerous times prior to the May 31, 2024, deadline for the RESEA seminar. However, several of the dates occurred prior to the RESEA notice being issued on May 13, 2024. The claimant could not recall what issue he was contacting the DUA for when he did call on May 13, May 24, May 30, and May 31, 2024. The claimant credibly testified that he did not speak to anyone due to call volume.

The claimant admitted that he did not contact a career center prior to the May 31, 2024, deadline and did not attempt to contact a career center prior to the deadline. The claimant testified that he first spoke to the career center on June 14, 2024. At that time, the claimant informed the career center that he had returned to full-time employment.

The claimant credibly testified that he received an offer of full-time employment on May 15, 2024. The offer was contingent upon a background check, which the claimant passed on May 31, 2024 [sic]. The claimant admitted that he did not have a start date until he passed the background check.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. As discussed below, the date of May 31, 2024, which appears in Consolidated Finding # 14 and again in the review examiner's credibility assessment, is unsupported by the record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. We further believe that, with the exception of the date just noted, the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, we disagree with the review examiner's legal conclusion that the claimant is ineligible for 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, he concluded that the claimant failed to meet the DUA's requirement that he complete a RESEA seminar by the deadline. This requirement is found under 430 CMR 4.01, which 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.

(Emphasis added.)

In this case, the agency notified the claimant on May 13, 2024, that, in order to continue receiving benefits, he had to participate in a RESEA seminar by May 31, 2024. *See* Consolidated Finding # 4. He did not attend the seminar until June 10, 2024. For this reason, the agency denied benefits during the week that he should have attended the seminar, the week beginning May 26, 2024. *See* Consolidated Finding # 15. The question is whether, after remand, the record now shows that the claimant had good cause to miss the seminar deadline pursuant to any of the listed reasons under 430 CMR 4.01(8).

In Board of Review Decision 0030 9537 40 (Sept. 23, 2019), we observed that the purpose of the RESEA program is to provide additional job search assistance services to unemployed individuals whom the agency identifies as likely to need assistance to find a new employment. 430 CMR 4.01(8)(a). We stated that, since attendance at a job interview is listed as one of the circumstances which constitutes good cause, it stands to reason that securing a full-time job also constitutes good cause. This is because the claimant no longer needs job search assistance from the RESEA program.

Here, the consolidated findings show that, on May 15, 2024, two days after getting the RESEA notice, the claimant received an offer for a new full-time job contingent upon passing a background check. *See* Consolidated Finding # 8. Given this contingency and the lack of a specific start date, we do not view this as a *bona fide* offer of new employment.¹

However, Remand Exhibit 6, an email exchange between the claimant and this new employer, shows that, on May 20, 2024, he was notified that he passed his background check and was asked to start the new job on June 3, 2024.² With this email, the claimant has provided substantial evidence that he had a *bona fide* job offer for a full-time job as of May 20, 2024. Inasmuch as he received this offer prior to the May 31, 2024, RESEA seminar deadline, and it was for new full-time employment which was to start three days after the RESEA seminar deadline, it is evident that he did not need job search assistance from the RESEA program.

As in prior cases, we conclude as a matter of law that the claimant's full-time job offer constituted good cause under 430 CMR 4.01(8)(a), to miss his RESEA seminar. The claimant may not be disqualified pursuant to G.L. c. 151A, § 25(a).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning May 26, 2024, if otherwise eligible.

¹ *See* Board of Review Decision 0002 1161 65 (Nov. 13, 2013) (claimant did not receive a *bona fide* job offer, where she was not given a firm start date or salary, and the new employer had yet to verify her professional license and check her references).

² While not explicitly incorporated into the review examiner's findings, Remand Exhibit 6 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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 28, 2024



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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