



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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BOARD OF REVIEW
DECISION

In the matter of:

Appeal number: BR-121272

CLAIMANT APPELLANT:

[REDACTED]

EMPLOYING UNIT:

[REDACTED]

Introduction and Procedural History of this Appeal

The claimant appeals a decision by [REDACTED], a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits for the summer of 2011. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim, effective June 20, 2010, after he was laid off from a full-time teaching position. He was approved for benefits. At the end of his benefit year, a new claim was filed for the claimant, effective June 19, 2011. He was then denied benefits, beginning the week ending June 25, 2011, in a determination issued on August 22, 2011. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on November 10, 2011.

Benefits were denied after the review examiner determined that the claimant had reasonable assurance of re-employment, pursuant to G.L. c. 151A, § 28A, from this employer for the 2011-2012 school year in the same capacity as he had been working in the 2010-2011 school year. 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 clarify several of the key dates which affect the outcome of the case. Both parties attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the reasonable assurance of re-employment as a substitute teacher for the 2011-2012 school year disqualifies the claimant from receiving benefits for the summer of 2011, where his active unemployment claim is based on wages from a position from which he was laid off in June 2010.

Findings of Fact

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

1. On October 26, 2010, the claimant, who had been laid off from his full-time teaching position in June 2010 and was collecting unemployment benefits, was awarded a spot on the employer's substitute teacher list.
2. The claimant was a substitute teacher for the remainder of the 2010-2011 academic year.
3. On June 3, 2011, the claimant received reasonable assurance that he was, again, awarded a spot on the employer's substitute teacher list for the 2011-2012 academic year.
4. The claimant filed a new claim for benefits on June 24, 2011, effective week ending June 25, 2011.
5. On August 22, 2011, the DUA issued a Notice of Determination of Eligibility under Section 28A ("Notice") indicating that, since the claimant had reasonable assurance that he would be returning to work as a substitute teacher for the 2011-2012 school year, he was disqualified from receiving unemployment benefits.
6. On August 31, 2011, the claimant appealed the Notice and requested a hearing on the matter.
7. The claimant's sequence 002 claim included \$13,840.89 in wages earned between April 1, 2010 and June 30, 2010 while the claimant was as a full-time teacher for the employer.
7. The benefit year ending date for the claimant's sequence 001 claim was June 18, 2011.

Ruling of the Board

The Board adopts the review examiner's consolidated findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

G.L. c. 151A, § 28A, states in relevant part, as follows:

Benefits based on service in employment as defined in subsections (a) and (d) of section four A shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that:

(a) with respect to service performed in an instructional, . . . capacity for an educational institution, benefits shall not be paid on the basis of such services for any week commencing during the period between two successive academic years or terms, . . . to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms . . .

As an initial matter, we note that the review examiner's findings reference two claims filed by or for the claimant. The first was filed in June 2010 (sequence 001) after he was laid off from his full-time teaching position. The second was filed in June 2011 (sequence 002), after which he was disqualified for benefits for the summer of 2011.

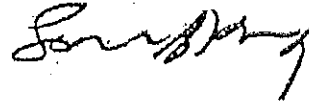
The August 22, 2011 determination which was appealed by the claimant related not to the sequence 002 claim, but to the sequence 001 claim. On the determination itself, the benefit year expiration date is June 18, 2011. The DUA's records also show that the claimant still certified for benefits on the sequence 001 claim after June 2011. *See* Remand Exhibit #6. He had qualified for Emergency Unemployment Compensation (EUC) benefits and elected to stay on the sequence 001 claim. Indeed, we see no indication at all that the claimant has collected benefits on the sequence 002 claim. Thus, to determine whether the claimant is disqualified for benefits in the summer of 2011, we must focus on the sequence 001 claim.

We have held previously that the relevant time period to examine when determining whether a claimant is disqualified under G.L. c. 151A, § 28A is the base period, not the benefit year. *See* BR-109037-OP (September 3, 2009). Therefore, the issue here is not whether the claimant is disqualified for benefits under G.L. c. 151A, § 28A based on reasonable assurance of re-employment given by this employer in the benefit year, but whether he should be disqualified based on his separation in the base period. In this case, he should not be disqualified. Even though the claimant has received reasonable assurance of re-employment by this employer, he still qualifies for benefits based on his lay off during the base period.

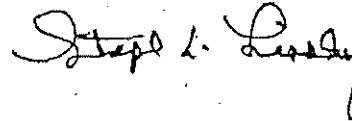
We, therefore, conclude as a matter of law that the claimant is not disqualified, pursuant to G.L. c. 151A, § 28A, for benefits for the summer of 2011, because the claimant's eligibility for benefits is still based on full-time employment from which he was laid off in June 2010. However, his substitute teaching wages may not be used to calculate his benefit rate.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending June 25, 2011, and for subsequent weeks in the summer of 2011, if otherwise eligible. None of the wages the claimant was paid during the 2010-2011 academic year as a substitute teacher may be used to establish the claimant's benefit rate between June 25, 2011 and the commencement of the next school term. DUA's Determinations Unit must determine the claimant's benefit rate consistent with this decision.

BOSTON, MASSACHUSETTS
DATE OF MAILING - April 27, 2012



John A. King, Esq.
Chairman



Stephen M. Linsky, Esq.
Member

Member Sandor J. Zapolin declines to sign the majority opinion.

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)

LAST DAY TO FILE AN APPEAL IN COURT- May 29, 2012

SF/jv