

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0025 8575 93

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award the claimant unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant previously filed a claim for unemployment benefits effective August 27, 2017. During the course of her unemployment claim, the claimant was later hired by the instant employer to work from March 19, 2018, until the end of the school year in mid-June, 2018. On August 1, 2018, pursuant to G.L. c. 151A, §§ 28A, the DUA issued a determination finding the claimant eligible to use the claimant's wages from the instant employer for benefits claimed during the period of June 10, 2018, through September 1, 2018. The employer appealed the determination to the DUA Hearings Department. Following a hearing on the merits, attended only by the employer, the review examiner affirmed the agency's initial determination in a decision rendered on October 4, 2018. We accept the employer's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.

The employer has not disputed that the claimant did *not* have reasonable assurance of re-employment in the same or a similar position in the next ensuing academic year. Thus, pursuant to G.L. c. 151A, §§ 28A, the decision allows the claimant to use any base period wages from the instant employer in calculating the claimant's benefit rate for any benefits requested during the 2018 summer school break.

However, we note that this decision has no practical effect on either party. The claimant's unemployment claim is based entirely on prior employment. The claimant's base period, which runs from July 1, 2016, through June 30, 2017, does not include any wages from the instant employer. In addition, the claimant did not request benefits at all during the 2018 summer school break. The claimant ceased requesting benefits after the week ending June 16, 2018, and her unemployment claim expired on August 25, 2018. The claimant has not since filed a new unemployment claim.

On appeal to the Board of Review, the employer argues that the claimant's position was determined to be seasonal and, thus, wages from this employment should not be used to determine her benefits, pursuant to G.L. c. 151A, §§ 24A. That is an unrelated issue that would be the subject of a separate determination. And, as noted above, the claimant's unemployment claim is not based on any wages from the instant employer.

The review examiner's decision is affirmed. The claimant did not have reasonable assurance from the instant employer pursuant to G.L. c. 151A, §§ 28A. The claimant is entitled to use any base period wages from the instant employer in calculating the claimant's benefit rate for the weeks of June 17, 2018, through September 1, 2018.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 13, 2018



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 OR TO THE BOSTON MUNICIPAL 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.

JRK/rh