

**Board of Review
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Michael J. Albano
Member**

Issue ID: 0031 3025 70

BOARD OF REVIEW DECISION

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 the claimant benefits following her separation from employment on June 19, 2019. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On August 20, 2019, the agency initially determined that the claimant was not entitled to unemployment benefits during the summer period from June 30 through September 7, 2019. The claimant appealed, and both parties attended the hearing. In a decision rendered on September 21, 2019, the review examiner affirmed the agency determination, concluding that the claimant had reasonable assurance of re-employment for the next academic year, and, thus, she was disqualified for the summer period between academic years under G.L. c. 151A, § 28A. The Board accepts the claimant'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 claimant's appeal, we conclude that the review examiner's decision, which concluded that the employer provided reasonable assurance of re-employment pursuant to G.L. c. 151A, § 28A, is based on substantial evidence and is free from any error of law affecting substantive rights. We affirm this portion of the review examiner's decision.

This means that the claimant is not eligible to receive benefits between June 30 through September 7, 2019, based upon the substitute teacher wages which she earned from the employer school district during her base period. G.L. c. 151A, § 28A, does not, however, exclude benefits payable on the basis of wages earned working for non-educational employers. During the hearing, the claimant testified that she also performed substitute teaching services for [Employer A] during her base period.¹ The DUA's electronic record-keeping system, UI Online, confirms wages paid to the claimant by [Employer A], a temporary help firm, during two base period quarters. Because the claimant may be eligible to be paid unemployment benefits over the summer period based upon these other wages, we reverse that portion of the review examiner's decision which rendered a total disqualification of benefits for these weeks.

¹ This testimony 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).

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits for the period June 30 through September 7, 2019, if otherwise eligible.² However, the claimant's base period earnings from her substitute teaching position with the instant employer should be excluded when calculating her weekly benefit rate for this period.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 10, 2019



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 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.

AB/rh

² We note that UI Online shows that Issue I.D. 0031 3025 97, which involves a separate question of eligibility related to [Employer A] is currently pending before the DUA. The outcome of that issue may also affect the claimant's entitlement to benefits based upon wages earned from this other employer.