

**The claimant, an adjunct professor, did not receive reasonable assurance of re-employment for the fall 2020 semester until she received a completed contract signed by the Dean in August 2020. The employer's online course posting was not finalized by anyone with actual hiring authority and therefore was not reasonable assurance within the meaning of G.L. c. 151A, § 28A.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> 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: 0044 5779 87  
0047 6843 75**

### Introduction and Procedural History of this Appeal

The claimant appeals two decisions by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits beginning July 7, 2020. 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 June 23, 2019, through June 20, 2020. After that claim had expired, she filed a new claim for unemployment benefits effective June 28, 2020. In two determinations issued on July 9, 2020, the claimant was denied benefits for the period of May 17, 2020, through June 20, 2020, and for the period beginning June 28, 2020. The claimant appealed both determinations to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed in part and reversed in part the agency's determination in Issue ID # 0044 5779 87 and affirmed the agency's determination in Issue ID # 0047 6843 75. In two decisions rendered on December 2, 2020, he concluded that the claimant was eligible for benefits from May 17, 2020, through June 6, 2020, and ineligible for benefits thereafter.<sup>1</sup> We accepted the claimant's applications for review.

Benefits were denied after the review examiner determined that the claimant, an adjunct professor, had been given reasonable assurance of re-employment for the next academic year as of June 7, 2020, and, thus, she was disqualified as of that date in accordance with the provisions of G.L. c. 151A, § 28A. 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 obtain additional information about the employer's procedures for retaining adjunct faculty and the claimant's employment contract for the fall 2020 semester. Both parties attended the remand

---

<sup>1</sup> Issue ID # 0044 5779 87 pertains to the claimant's monetary eligibility for benefits based on wages earned from an educational institution during the period beginning May 17, 2020, through June 20, 2020. Issue ID # 0047 6843 75 pertains to the claimant's monetary eligibility for benefits based on wages earned from an educational institution during the period beginning June 28, 2020, through August 29, 2020. As both issues were heard at the same time and are governed by the same section of law, our decision shall address the claimant's monetary eligibility during the entire period on appeal.

hearing. Thereafter, 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 decisions, which concluded that the claimant was entitled to benefits from May 17, 2020, through June 6, 2020, and not entitled to benefits thereafter because she had reasonable assurance of re-employment for the subsequent academic year, 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 for both Issue ID # 0044 5779 87 and Issue ID # 0047 6843 75 are set forth below in their entirety:

1. The claimant worked for the employer, a university, as a day school adjunct professor, beginning September 10, 2008. The claimant taught communications courses.
2. On June 24, 2019, the claimant filed her claim for benefits with the Department of Unemployment Assistance (DUA) with an effective begin date of June 23, 2019, and an effective end date of June 20, 2020.
3. Course offerings to students are determined by the Department Chair and Dean.
4. The course offerings are posted to students in February.
5. The Dean provides a list of courses which will be offered to the Department Chair.
6. Beginning in March, the Department Chair speaks with faculty about course offerings for the upcoming semester.
7. The Department Chair obtains commitments from faculty to teach the courses which list of commitments is submitted to the Dean.
8. The Dean and Department Chair decide what courses will be assigned to individual faculty.
9. In early July, contracts for the offered courses are mailed to faculty.
10. Course offerings to adjunct faculty are subject to sufficient enrollment with tenured faculty being given course assignment priority.
11. It is unlikely a day school course will be cancelled due to a drop in enrollment after a contract has been sent to faculty.

12. The employer uses an application named “Banner” which identifies courses offered to faculty for upcoming semesters. Faculty may access the Banner system to see assigned courses and enrollment status.
13. The claimant’s work history is as follows:
  - For the Spring 2017 Semester, the claimant was offered 2 courses and taught 2 courses, 3 credits each at \$1,727.00, totaling \$10,362.00.
  - For the Fall 2017 Semester, the claimant was offered 3 courses and taught 3 courses, 3 credits each at \$1,801.49, and totaling \$16,213.41.
  - For the Spring 2018 Semester, the claimant was offered 2 courses and taught 2 courses, 3 credits each at \$1,801.49, totaling \$10,808.94. The claimant was also offered a .25 credit to monitor 1 student, totaling \$450.37, for a final total of \$11,259.31.
  - For the Fall 2018 Semester, the claimant was offered 3 courses and taught 3 courses, 3 credits each at \$1,888.01, and totaling \$16,992.09.
  - For the Spring 2019 Semester, the claimant was offered 2 courses and taught 2 courses, 3 credits each at \$1,888.01, and totaling \$11,328.06.
  - For the Fall 2019 Semester, the claimant was offered 1 course and taught 1 course, 3 credits each [sic] at \$1,953.83, and totaling \$5,861.49.
  - For the Spring 2020 Semester, the claimant was offered 2.5 credits at \$1953.83, each at [sic] for an individual student directed study, totaling \$4,884.58.
14. The Spring 2020 Semester spanned January 21, 2020 through May 16, 2020.
15. In the February/ March 2020 [sic], the Department Chair (Department Chair A) discussed with the claimant 3 course offerings for the Fall 2020 Semester, one of which was Journalism and Society.
16. The Fall 2020 Semester spanned September 1, 2020 through December 19, 2020.
17. On April 30, 2020, the Department Chair emailed the claimant about a reduction in 2020 Fall course offerings, from 3 courses to 1 course, stating, in part:

Subject: Fall 2020 Course Schedule

Hello [Claimant],

I hope you and your families are all staying well and healthy and that your class has been running smoothly. I'm afraid to tell you that due to low enrollment in your section in Intro Mass Comm J2 for the Fall (many of the other Comm courses, too), the Dean has made a decision to drop those sections. As you may know, departments across the colleges have been asked to cut their budgets due to a projected low enrollment of first year and current students. I'm really sorry that we couldn't offer and hold those sections for now, and I hope we will keep your Journalism and Society as a regular course (currently we have 12 students).

I will let you know if I hear of any change from the Dean. Thank you again for all that you're doing to teach and support our students, and I hope to see you next Monday at 12:30.

18. The claimant had no further direct communication with Department Chair A after April 30, 2020, other than Department Chair A's general emails to faculty.
19. On May 21, 2020, the Department Chair emailed, among others, the claimant, stating, in part:

Hello all.

Hope you are doing well and safe. To file for unemployment, I've been asked to send our adjunct faculty an email that there is no guarantee of employment in the fall. I'm going to send you a separate email (see below) tomorrow morning, in case you need my email note when you apply for unemployment.

Best [Department Chair]  
Subject line "No guarantee of employment for the next fall"

Hello Comm adjunct faculty.

This email is to inform you that your employment in the 2020 Fall is not guaranteed, particularly due to the impacts of the COVID-19 pandemic. Because your employment depends on funding, enrollment, and course offering, you are not guaranteed to return for work for the next fall semester.

20. On May 22, 2020, the Department Chair emailed, among others, the claimant, stating, in part:

Subject: No guarantee of employment for the next fall

This email is to inform you that your employment in the 2020 Fall is not guaranteed, particularly due to the impacts of the COVID-19 pandemic. Because your employment depends on funding, enrollment, and course offering, you are not guaranteed to return for work for the next fall semester.

Sincerely,

[Department Chair]

21. On May 12, 2020, the claimant reopened her unemployment insurance claim with an effective begin date of May 10, 2020.
22. The Payroll Manager was informed of the claimant's unemployment insurance claim.
23. Prior to June 2, 2020, the Payroll Manager checked Banner and saw the claimant had been assigned one course, Journalism and Society.
24. The Payroll Manager was not aware of any verbal or written communication concerning course offerings between the claimant and Department Chair A.
25. On June 1, 2020, the Payroll Manager emailed the Department Chair A to confirm the claimant had been offered one course and the reason for the reduction, as follows:

[Department Chair A]: Unemployment is requesting information related to [Claimant's] unemployment claim. According to Banner, he is scheduled to return 09/01/20, but what is the reason for the decline of course assignment from a high of 9 credits per semester to 1? Is it due to his availability or less courses being offered to him due to other reasons? If other, please elaborate  
Thank you [Payroll Manager]

26. On June 2, 2020, the Payroll Manager received an email response from Department Chair A, which stated, in part:

Hi [Payroll Manager],

I don't know about the specific reasons for assigning her credits in Fall 2018 because I was not Chair at that time. The main reasons for the recent decline of her course assignments are due to low enrollment and less courses being offered due to budget cuts. Hope this information would help  
Best regards,  
[Department Chairman A]

27. A Banner printout on June 7, 2020, indicated the claimant had been assigned a Journalism and Society course for the Fall 2020 semester. Twelve (12) students out of a twenty (20) student class were enrolled.
28. On June 19, 2020, the claimant reopened her unemployment insurance claim with an effective begin date of June 14, 2020.
29. On June 30, 2020, Department Chair A forwarded by email to the claimant a copy of an [sic] emails he previously sent to her dated on May 22, 2020.

30. On June 30, 2020, the claimant sent an email to the Payroll Manager, which stated, in part:

[Payroll Manager],

I need your help You've mischaracterized my situation to the Massachusetts Department of Unemployment Assistance I never "declined" any classes Classes may be scheduled and then canceled based on low enrollment Similarly, just because I am "scheduled" to teach does not guarantee that I will be teaching It only means that I have indicated my availability Again, it all depends on enrollment In other words, I have no reasonable assurance of work from one semester to the next Apparently, you or someone) has indicated that I do. This is false If you ask [Department Chair A], he will tell you the same thing How can we fix this?

Thanks,  
[Claimant]

31. On July 1, 2020, the Payroll Manager sent an email to the claimant, which stated, in part:

[Claimant] I apologize for the delayed response Your original email to our Payroll account went to junk mail. I reviewed our responses to Unemployment and there is no mention of "declined". We respond to the initial Lack of Work questionnaire based on the information we have available

In your case, we responded that you were not laid off, that the summer period of 16 weeks is a known break between semesters, and that you are scheduled to return on 09/01/20

We classify our response as reasonable assurance when you are returning and to was a change starting last year after Unemployment informed us we were not responds properly as a School employer

We are then required to respond to a School Employee - Employer Questionnaire with more detail of what your past history was, what your returning activity will be, how you are notified and how you notify us along with a course assignment and enrollment history back at least 2 years

From there, Unemployment makes the determination as to whether you are eligible for benefits or not and whether reasonable assurance applies [Payroll Manager]

32. On July 3, 2020, the DUA issued a Notice of Disqualification determining the claimant performed services for an educational institution during the most recent academic term or year and there was a contract or reasonable assurance that she would perform services for an educational institution during the next year or term and therefore could not receive a benefit based on wages earned working for an educational institution for week [sic] commencing during the period between these academic years or terms and therefore was not eligible to

- receive not entitled to receive benefits for the period beginning May 17, 2020 through June 20, 2020.
33. On July 3, 2020, the DUA issued a Notice of Disqualification determining the claimant performed services for an educational institution during the most recent academic term or year and there was a contract or reasonable assurance that she would perform services for an educational institution during the next year or term and therefore could not receive a benefit based on wages earned working for an educational institution for week commencing during the period between these academic years or terms and therefore was not eligible to receive not entitled to receive [sic] benefits for the period beginning June 28, 2020 through August 29, 2020.
  34. On July 9, 2020, the claimant filed a new claim for benefits with the Department of Unemployment Assistance (DUA) with an effective begin date of June 28, 2020 and an effective end date of June 26, 2021.
  35. On August 4, 2020, the claimant was mailed a contract signed by the Dean for one course for the Fall 2020 Semester, Journalism and Society. The claimant signed the contract and mailed it to the employer. The signed contract was received by the employer on August 18, 2020.
  36. Contracts were mailed later for the 2020 Fall semester due a reduced budget, the impact of COVID-19, both present and future, and uncertain enrollment.
  37. The claimant was not told she would not be teaching the 2020 Fall Semester Journalism and Society course.
  38. The claimant may have looked at Banner to see if someone signed up for the Journalism and Society course but did not know when.
  39. The claimant did not believe she had reasonable assurance of employment for the fall 2020 Semester due to the Department Chair A's emails and COVID-19 pandemic impacting enrollment.
  40. The claimant was unsure she would be teaching the Journalism and Society course until she received the contract.

### Ruling of the Board

In accordance with our statutory obligation, we review the record and the decisions 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 original conclusions are free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems 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 was not eligible for benefits from June 7, 2020, through June 20, 2020, and again from June 28, 2020,

through August 29, 2020, because she had reasonable assurance of re-employment for the subsequent academic year.

As an academic employee of an educational institution, the claimant's eligibility for benefits during the relevant period is properly analyzed under G.L. c. 151A, § 28A, which 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 . . . .

The U.S. Department of Labor (DOL) has released guidance pertaining to the analysis of reasonable assurance for adjunct professors. In Unemployment Insurance Program Letter (UIPL) No. 5-17 (Dec. 22, 2016), DOL sets forth an initial set of criteria for determining whether a claimant is entitled to benefits between academic periods. There must be a written, oral, or implied offer from a person with authority to offer employment, the offer is for a job in the same capacity (*i.e.*, professional or non-professional), and the economic conditions of the offer must not be considerably less than in the prior academic period. *Id.* at part 4(a), pp. 4–5. Where an offer includes a contingency, further criteria require that the contingency must be outside of the employer's control and the totality of circumstances must show that, notwithstanding the contingent nature of the offer, it is highly probable that the offered job will be available in the next academic period. *Id.* at part 4(c), p. 6.

In his original decision, the review examiner concluded that the claimant had reasonable assurance of re-employment, because a printout from employer's online course database dated June 7, 2020, listed the claimant as teaching a Journalism and Society in the fall, 2020 academic term. *See* Consolidated Finding # 27. However, the employer's Dean and Department chair do not make any final decisions about what courses will be offered until later in the summer, well after the courses are posted online. *See* Consolidated Findings ## 4–9. Therefore, there is nothing in the record suggesting these preliminary online postings could reasonably be construed as offers of re-employment for the subsequent academic term.

The claimant received a contract signed by the Dean on or around August 4, 2020. Consolidated Findings ## 8 and 35. Absent evidence indicating that claimant was informed of the employer's final decision regarding her courses for the fall, 2020 academic term prior to that date, we conclude that the claimant did not have a written, oral, or implied offer of re-employment until August 4, 2020.



We, therefore, conclude as a matter of law that the claimant did not receive reasonable assurance of re-employment for the fall, 2020 academic term within the meaning of G.L. c. 151A, § 28A(a), until August 4, 2020.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits for the weeks from May 17, 2020, through June 20, 2020, and is further entitled to receive benefits from the week beginning June 28, 2020, through August 7, 2020, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 31, 2021**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**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](http://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