

The claimant, a teacher for the employer’s school system, received reasonable assurance of re-employment pursuant to G.L. c. 151A, § 28A, for her regular full-time job in the 2020-21 academic year. While she did not have reasonable assurance for her separate work with the employer’s summer program, the wages earned from that position during her base period were not sufficient to establish monetary eligibility for benefits.

**Board of Review
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Issue ID: 0046 9673 95

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 affirm.

The claimant filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on September 24, 2021. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency’s initial determination and denied benefits in a decision rendered on May 10, 2022. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant, a kindergarten teacher for a public-school system, had been given reasonable assurance of re-employment in the next academic year, and, thus, she was disqualified under 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 evidence pertaining to the claimant’s earnings during the summer of 2019. 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 before the Board is whether the review examiner’s decision, which concluded that the claimant was not entitled to benefits for the period between June 21, 2020, and September 12, 2020, because she had reasonable assurance of re-employment for the subsequent academic year for her full-time kindergarten teaching position, 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 are set forth below in their entirety:

1. The claimant works as a kindergarten teacher for the employer, a municipality school department. She began work for the employer in August 2017. She works full-time.
2. The claimant usually worked for the employer's summer school program.
3. For four weeks in July 2019, the claimant worked as an ELL/Reading teacher for the employer's summer program. She earned \$35 per hour and worked approximately 17.5 hours each week. She earned a total of \$2,520.00.
4. The claimant's position as a kindergarten teacher was a 10-month, academic year position.
5. The claimant was not required to work at the employer's summer school program to retain her full-time teaching position.
6. At the end of the 2019–2020 school year, the employer gave the claimant a letter of reasonable assurance returning her to work for the 2020–2021 school year.
7. The claimant last performed work for the 2019–2020 school year on June 23, 2020.
8. The employer did not have work for the claimant during the summer of 2020.
9. The claimant applied for unemployment benefits and was determined to have a benefit year beginning June 21, 2020.
10. The claimant returned to work on September 16, 2020.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except the portion of Consolidated Finding # 6, which states the employer provided the claimant with a letter of reasonable assurance, as it is not purely a factual finding. It includes a legal conclusion about whether the claimant had reasonable assurance, which at this stage of the proceedings is left to the Board of Review. *See Dir. of Division of Employment Security v. Fingerman*, 378 Mass. 461, 463–464 (1979) (“Application of law to fact has long been a matter entrusted to the informed judgment of the board of review.”). In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we agree that the claimant is ineligible for benefits.

As a professional employee of an educational institution, the claimant's eligibility for benefits during the relevant period is properly analyzed under the following provisions of G.L. c. 151A, § 28A, which state, in relevant part:

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, research, or principal administrative 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, or when an agreement provides instead for a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, 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

If it is determined that a claimant had reasonable assurance of re-employment pursuant to G.L. c. 151A, § 28A, the claimant's base period earnings from that position are excluded when calculating the claimant's weekly benefit rate for the period between academic years.

The review examiner initially denied the claimant benefits on the grounds that the employer had provided the claimant with reasonable assurance of re-employment for the subsequent academic year. He reached this conclusion based on the employer's attestations that it issued the claimant a memorandum offering her reasonable assurance of re-employment for the 2020–2021 academic year.¹ On remand, the claimant did not dispute that she knew she was returning to her kindergarten teacher job in the fall. From this we can reasonably infer that she had reasonable assurance of returning to her same position with substantially the same economic terms and conditions. Therefore, pursuant to G.L. c. 151A, § 28A, the claimant is not entitled to any unemployment benefits based upon the wages she earned from her work as a kindergarten teacher during the 2019–20 academic year.

However, the claimant's teaching position was a 10-month, academic year position, meaning she was free to take the summer off or pursue other full- or part-time work during the summer break. *See Consolidated Findings ## 4 and 5.* In addition to her academic year work, the claimant also worked for one of the employer's summer programs during her base period. *Consolidated Finding # 3.* Because the claimant's summer work was under a separate contract from her academic year position, and there is no indication that she received reasonable assurance for her position in the summer program, her wages from that position may not be excluded under G.L. c. 151A, § 28A.

¹ The employer's uncontested testimony in this regard 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).

Following remand, the review examiner found that the claimant's gross base period earning from the employer's summer program totalled \$2,520.00. Consolidated Finding # 3. While these wages are not excluded under the provisions of G.L. c. 151A, § 28A, they are insufficient to establish the claimant's monetary eligibility for benefits.²

We, therefore, conclude as a matter of law that the claimant received reasonable assurance of re-employment for the subsequent academic period within the meaning of G.L. c. 151A, § 28A(a), in her full-time kindergarten teacher job, and she is not entitled to benefits during the period between academic years.

The review examiner's decision is affirmed. The claimant is denied benefits for the period June 21, 2020, through September 12, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 29, 2022



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.

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² G.L. c. 151A, § 24(a), states that a claimant must have earned \$2,000.00 in the base period. However, this amount has been changed, as required under the statute, based on changes to the minimum wage. The minimum amount of wages necessary to meet the monetary threshold at the time the claimant filed her unemployment claim was \$5,100.00.