

**Board of Review
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Issue ID: 0047 7036 66

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 at the end of the 2019-2020 academic year. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On July 22, 2020, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties attended the hearing. In a decision rendered on September 23, 2020, the review examiner affirmed the agency determination, concluding that the claimant had been given reasonable assurance of re-employment for her regular full-time job in the next academic term, and, thus, she was disqualified under G.L. c. 151A, § 28A. The Board accepted the claimant's application for review.

Findings of Fact

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

1. The claimant worked for the employer, a city school department, as a paraprofessional during the academic year 2019–2020, ending June 19, 2020. The claimant was paid \$20.63 per hour.
2. On June 18, 2020, the claimant was emailed a letter offering her employment as a “CLASSROOM PARA” during the next academic year, 2020–2021, beginning in August 2020.
3. On July 6, 2020, the claimant electronically acknowledged receipt of the email.
4. Professional Development training for the 2020–2021 academic year began on August 24, 2020.
5. On August 24, 2020, the claimant returned to work as a “CLASSROOM PARA” at the same rate of pay.
6. The claimant had been hired to work summer school (July 6, 2020, through August 6, 2020) during the summer break.

7. Due to COVID-19, the summer break work scheduled for July 6, 2020, through August 6, 2020, was cancelled.
8. The claimant did not work summer school scheduled for July 6, 2020, through August 6, 2020, during the summer break.

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 findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact except as follows. Finding of Fact # 7 infers that the summer program was cancelled. This is inaccurate, as the parties indicated that, because the employer decided to teach the summer program remotely, the claimant's paraprofessional services were simply not needed.¹

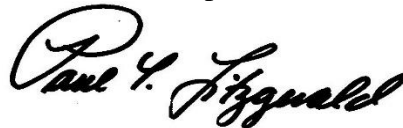
After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights. *See* Board of Review Decision 0048 9472 75 (October 8, 2020) (paraprofessional, who received reasonable assurance to return to her regular full-time, 10-month position in the fall, was not eligible for regular unemployment benefits over the summer after the employer rescinded its summer school job offer due to COVID-19, because the summer program was not a mandatory part of her regular job).

The review examiner's decision is affirmed. The claimant is denied regular unemployment benefits for the weeks beginning June 21, 2020, through August 22, 2020.

¹ *See* Exhibit 8, the employer's June 8, 2020, letter to the claimant, which states, "the previously offered summer school position will not occur due to a change in programming as a result of the COVID-19 pandemic," and the claimant's appeal, which asserts that the employer decided to proceed with the summer program remotely with teachers, while paraprofessionals were cut. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

Because the claimant's offer of summer school employment was rescinded due to COVID-19, she may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may contact the PUA call center at (877) 626-6800, and ask to speak to a Tier 2 PUA Supervisor.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 14, 2020



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.

AB/rh