

School paraprofessional received reasonable assurance of re-employment to her regular full-time job in the 2020-21 academic year. Because her other work for the school department, including tutoring, after-school care, and 2019 summer employment, were not required as part of her full-time position, she is entitled to a reduced weekly benefit amount based upon those base period earnings for the weeks between academic years.

**Board of Review
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Issue ID: 0047 7968 91

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 we affirm in part and reverse in part.

The claimant separated from her position with the employer on June 17, 2020. She filed a claim for unemployment benefits with the DUA but was denied benefits for the period June 14 through August 29, 2020, in a determination issued on August 5, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on December 4, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had been given reasonable assurance of re-employment in the next academic year, and, thus, she was disqualified under G.L. c. 151A, § 28A. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was not entitled to any benefits during the period between the 2019–20 and 2020–21 academic years, pursuant to G.L. c. 151A, § 28A, is supported by substantial and credible evidence and is free from error of law, where the claimant had school employment that was separate from the position for which she received reasonable assurance of re-employment.

Findings of Fact

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

1. The claimant began her employment with the employer, a town, in September 1998.

2. The claimant worked full-time as a special education paraprofessional during the academic year 2019–2020, which began on August 27, 2019, and ended on June 17, 2020. The claimant was paid \$32.30 per hour.
3. The claimant also worked for the employer as an after school aide and as a tutor during the academic year 2019–2020.
4. The claimant was paid \$30.00 per hour as a tutor.
5. The claimant was paid \$21.00 as an after school aide.
6. In March 17, 2020, due to COVID-19, the employer transitioned to remote learning. Work as an after school aide and tutor ended.
7. On June 17, 2020, the claimant was emailed a letter offering her employment in the same position during the next academic year, 2020–2021, beginning on August 27, 2020. The claimant’s pay was to be increased due to a 2 percent cost of living adjustment.
8. The claimant worked as a paraprofessional until June 17, 2020, the end of the 2019–2020 academic year.
9. On June 22, 2020, the claimant filed her claim for unemployment insurance benefits with the Department of Unemployment Assistance (DUA), with an effective begin date of June 14, 2020 and an effective end date of June 12, 2021.
10. On August 27, 2020, the claimant returned to work.
11. The base period of the claimant’s claim, the period during which wages paid to the claimant are used to calculate a weekly benefit amount (WBA), was April 1, 2019 through March 31, 2020.
12. The claimant was paid wages during the base period as follows:

PARAPROFESSIONAL

04/01/19 – 06/30/19	\$10,106.78
07/01/19 – 09/30/19	5,146.40
10/01/19 – 12/31/19	11,939.65
01/01/20 – 03/31/20	<u>11,527.93</u>
	\$38,720.76

AFTER SCHOOL AIDE

04/01/19 – 06/30/19	\$ 0.00
07/01/19 – 09/30/19	47.25
10/01/19 – 12/31/19	298.20

01/01/20 – 03/31/20 661.00
\$ 1,006.45

TUTOR

04/01/19 – 06/30/19 \$ 1,900.00
07/01/19 – 09/30/19 600.00
10/01/19 – 12/31/19 0.00
01/01/20 – 03/31/20 0.00
\$ 2,500.00 (Exhibit 14)

13. The claimant had also worked the 2019 summer school program.
14. 2019 summer school wages totaled \$3,069.12. (Exhibit 14)
15. Due to COVID-19, and a reduced need for staff, the claimant was not hired to work 25 to 30 hours per week for the 2020 summer school program which spanned July 6, 2020 through August 6, 2020.
16. The 2020 summer school program paid \$22.08 per hour.
17. Summer school, tutor, and after school aide employment were not required as part of the claimant's 2019-2020 academic paraprofessional job.
18. The claimant had no non-education wages in the base period (April 1, 2019 through March 31, 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 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 findings of fact except as follows. There appears to be a typographical error in the tutor wages listed for the period 07/01/09 through 09/30/19. Finding of Fact # 12 reports these wages as \$600. However, Exhibit 14 reports wages in the amount of \$690. Since both parties agreed to the wage amounts provided in Exhibit 14 during the hearing, we accept \$690 as the accurate figure.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, while we agree that the claimant received reasonable assurance of reemployment for her regular, full-time position in the next academic term, she is entitled to a reduced weekly benefit amount over the summer based upon her other base period school employment.

¹ 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).

As a non-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: . . .

(b) with respect to services performed in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week commencing during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms; provided that, if such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely because of a finding that such individual had reasonable assurance of performing services in the second of such academic years or terms;

(c) with respect to services described in subsections (a) and (b), benefits shall not be paid to any individual on the basis of such services for any week commencing during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess . . .

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 concluded that, prior to the end of the 2019–20 academic year, the claimant had been given reasonable assurance of re-employment for her 10-month academic year position in the next academic year at a rate of pay that is not substantially less than she earned in 2019–20. His findings of fact support this. The claimant had a full-time paraprofessional position during the 2019–20 academic year, which ended on June 17, 2020. Finding of Fact # 2. On that day, the employer emailed her a letter offering her the same position in the fall, for which she was going to receive a 2% cost of living increase in pay. Finding of Fact # 7. She also returned to perform her paraprofessional job, as anticipated, when the 2020–21 school year began on August 27, 2020. See Findings of Fact ## 7 and 10.

During the hearing, the claimant testified that she knew she had her paraprofessional job in the fall but was concerned about not having the tutoring or after-school work.² Because of this uncertainty and the fact that, when she returned to work, she did not have any tutoring or after-school work, she argues that she did not have reasonable assurance within the meaning of G.L. c. 151A, § 28A(b). We disagree.

The claimant was a full-time, 10-month paraprofessional in 2019–20. She was offered, and she returned to, the same full-time 10-month paraprofessional position in the fall with a slight increase in pay. *Compare* Board of Review Decision 0026 5187 26 (Feb. 27, 2019) (G.L. c. 151A, § 28A, does not preclude paying benefits, where the school district offered a 12-month school employee re-appointment to a 10-month position, because the economic terms of the offer were substantially less than those of his present position). Significantly, the tutoring and after-school work, like her summer work in prior years, were voluntary and not a requirement of her full-time job. Finding of Fact # 17. They were separate positions with different pay rates and hours.³ *See* Findings of Fact ## 2, 4, 5, 12, 15, and 16. *See also* Board of Review Decision 0048 9472 75 (Oct. 8, 2020) (claimant, who had reasonable assurance of re-employment to her full-time 10-month position was not entitled to benefits, even though she lost her summer school employment due to COVID-19, where summer employment was not part of her full-time job). Because the reduced earnings in the fall of 2020 were not part of the claimant’s full-time paraprofessional position, they do not affect whether or not she had reasonable assurance under G.L. c. 151A, § 28A(b), for that position.

However, because the wages earned in the base period from tutoring, after-school, and the 2019 summer school program were school wages separate from the job for which the claimant received reasonable assurance, they may not be excluded under G.L. c. 151A, § 28A. Findings of Fact ## 12 and 14 provide that the claimant earned a total of \$6,665.57 during her base period from this work. She is entitled to a weekly benefit amount during the period between academic terms based upon these earnings.

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(b), in her full-time paraprofessional job, and she is disqualified from receiving benefits during the relevant period based upon wages earned in that position.

² This portion of the claimant’s testimony is also part of the unchallenged evidence in the record.

³ The claimant testified that she worked 32.5 hours a week in her full-time job. This testimony was also undisputed.

The review examiner's decision is affirmed in part and reversed in part. For the week beginning June 14, 2020, through August 29, 2020, the claimant is entitled to a weekly benefit amount based only upon \$6,665.57 in base period earnings, if she is otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 22, 2021



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 contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**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