

Paraprofessional received reasonable assurance of re-employment to her regular full-time job in the 2020-21 academic year pursuant to G.L c. 151A, § 28A. Because she worked the 2019 summer program on a separate contract, 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: 0049 7406 44

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 reverse.

The claimant separated from her position with the employer on June 19, 2020. She filed a claim for unemployment benefits with the DUA but was denied benefit for the period beginning June 21, 2020 through August 15, 2020, in a determination issued on August 25, 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 November 2, 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. 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 make subsidiary findings of fact relating to the terms of the claimant's employment and her earnings during the summer of 2019. Thereafter, the review examiner issued her 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 from the week beginning June 21, 2020, through August 15, 2020, 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 are set forth below in their entirety:

1. The claimant began employment as a full-time paraprofessional with the employer, an educational institution, on July 16, 2018.

2. Under the collective bargaining agreement, the claimant's paraprofessional position is a 10-month academic year position.
3. The claimant works for the employer's summer school program under a separate contract.
4. The claimant's gross wages for the academic year 2018–2019 were about \$21,000.00.
5. The claimant's gross wages for the 2019 summer school program were \$8,297.00.
6. The claimant completed the 2019–2020 academic year with the employer, on June 19, 2020, the last day of school.
7. On June 11, 2020, the employer notified the claimant that she would be returning to work in the same position during the 2020–2021 school year.
8. On June 30, 2020, the claimant submitted her signed contract for continued employment during the 2020–2021 school year.
9. The employer's summer school program generally runs from July to September.
10. The employer had summer work available for the claimant in its 2020 summer school program.
11. The claimant was unable to work the entire duration of the summer of 2020 because, due to COVID-19, child-care for her children was unavailable.
12. To show good faith in light of the employer being short staffed, on July 6, 2020, and July 8, 2020, the claimant worked for the employer's summer school program because she was able to find childcare for those dates.
13. On August 13, 2020, the claimant quit her employment with the employer due to childcare issues related to COVID-19.

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. 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 the week beginning June 21, 2020, through August 15, 2020, because she had reasonable assurance of re-employment for the subsequent academic year.

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 properly concluded that, prior to the end of the 2019-2020 academic year, the claimant had been given reasonable assurance of re-employment for her same position in the subsequent academic year. *See Consolidated Finding # 7.* Because the claimant's terms and conditions of employment were governed by a collective bargaining agreement, we can reasonably infer that she would be returning under economic terms that were not substantially less. *See Consolidated Finding # 2.* 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 paraprofessional during the 2019–2020 academic year.

However, the claimant's 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 ## 2 and 3.* During the 2019 summer break, the claimant worked at the employer's summer school program under a separate contract. *Consolidated Findings ## 3 and 5.* Because the claimant's summer work were school wages separate from the job for which she received reasonable assurance, they may not be excluded under G.L. c. 151A, § 28A. *See Consolidated Findings ## 2 and 3.* The claimant's gross earnings from the 2019 summer program were \$8,297.00. *See Consolidated Finding # 5.* Therefore, 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 only disqualified from receiving benefits during the relevant period based upon wages earned in that position.

The review examiner's decision is affirmed in part and reversed in part. For the week beginning June 21, 2020 through August 15, 2020, the claimant is entitled to a weekly benefit amount based only upon \$8,297.00 in base period earnings, if she is otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 15, 2021



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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.

LSW/rh