

**The claimant, a teacher for the employer’s school system, received reasonable assurance of re-employment within the meaning of G.L. c. 151A, § 28A(a), for his regular full-time job in the 2020-21 academic year. However, he worked for a second employer during his base period. As he did not have reasonable assurance for this other job, his base period wages from this position may be used to establish the claimant’s monetary eligibility for benefits.**

**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: 0058 4726 89**

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 filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 29, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed in part, and overturned in part the agency’s initial determination and denied benefits in a decision rendered on January 5, 2022. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant, a teacher for a public-school system, had been given reasonable assurance of re-employment in the next academic year, and, thus, he 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 base period employment. Only the claimant attended the remand hearing. 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 because he had reasonable assurance of re-employment for the subsequent academic year for his full-time 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. In 2006, the claimant started working as a 6<sup>th</sup> grade teacher for the instant employer, a municipal school district, on a fulltime basis. The claimant is scheduled to work Monday through Friday from 7:45 a.m. until 2:45 p.m.
2. The claimant's supervisor at the instant employer's establishment is the principal.
3. The employer's school year usually runs from sometime after the Labor Day Holiday about August until sometime in June. The employer's summer recess period takes place in between this period of time.
4. The claimant was initially hired to work onsite at the instant employer's school location.
5. The claimant worked as a fulltime teacher for the instant employer's 2019–2020 school year. The instant employer paid the claimant an annual salary of \$74,325 for this school year.
6. The claimant initially worked onsite for the instant employer for the 2019-2020 school year.
7. In March, 2020, the claimant started temporarily working remotely for the instant employer due to the [COVID]-19 pandemic. At this time, there was [a] government order in place requiring school [sic] to shut down to onsite learning and transition to remote learning due to the [COVID]-19 pandemic.
8. The claimant continued to work remotely fulltime for the employer from March 2020 until the end of the instant employer's 2019–2020 school year.
9. On June 11, 2020, the instant employer mailed the claimant a letter by U.S. Mail offering the claimant reasonable assurance to return to work for the instant employer as a fulltime teacher again for the employer's 2020–2021 school year. The instant employer issued this letter to the claimant prior to the end of the 2019-2020 school year.
10. The instant employer provided the claimant with reasonable assurance to return to work for the employer's 2020–2021 school year as a teacher by means of a letter issued on June 11, 2020.
11. In addition to working for the instant employer, the claimant also works for a 2<sup>nd</sup> employer as a Camp Director. The 2<sup>nd</sup> employer is a religious organization. The claimant is the Camp Director of a camp for children in connection with this employer. The claimant is paid as a W-2 worker for the 2<sup>nd</sup> employer.
12. During the summer of 2001, the claimant initially started working for the 2<sup>nd</sup> employer. The claimant usually works 8 fulltime weeks for the 2<sup>nd</sup> employer during the summer months running from June until August. The claimant

usually then works part-time for the 2<sup>nd</sup> employer about 5-10 hours during the other weeks of the year. On June 15, 2020, the 2<sup>nd</sup> employer decided to close the summer camp.

13. Prior to filing an initial claim for unemployment benefits, the claimant's last date of work for the instant employer was on June 18, 2020. At this time, this was the claimant's last date of work for the instant employer due to the instant employer's 2019–2020 school year coming to an end and summer recess period beginning.
14. The claimant also works in a part-time capacity for a 3<sup>rd</sup> employer. The 3<sup>rd</sup> employer is a teacher's union. The claimant's last date of work for this employer was also June 18, 2020, as it was the end of the school year. In this role, the claimant is issued a W-2.
15. On June 19, 2020, the 2<sup>nd</sup> employer, the religious organization, notified the claimant he was officially laid off from work.
16. The claimant subsequently decided to file for unemployment benefits due to being laid off from work for the 2<sup>nd</sup> employer's establishment. The claimant informed the instant employer of his intent to file for unemployment benefits as he was laid off from the 2<sup>nd</sup> employer's establishment. The claimant did not want the instant employer to think there was a fraudulent unemployment claim that had been filed in connection with the claimant.
17. The claimant filed an initial unemployment claim effective the week beginning June 21, 2020. The claimant consecutively requested unemployment benefits until the week ending August 29, 2020.
18. On August 31, 2020, the claimant returned to fulltime work for the instant employer as a teacher for the 2020–2021 school year with other staff members. The school year was not delayed for the instant employer's staff. The students did not return to school until September 14, 2020. During the 2020–2021 school year, the instant employer paid the claimant an annual salary of \$76,184.00.
19. The claimant declined unemployment benefits for the week ending September 5, 2020, and subsequently stopped requesting unemployment benefits.
20. On a Monetary Redetermination issued to the claimant from the Department of Unemployment Assistance (DUA), the following paid gross wage information is listed for the claimant during the base period of the claimant's unemployment claim:

<u>Employer</u>	<u>April- June 2019</u>	<u>July- September 2019</u>	<u>October- December 2019</u>	<u>January- March 2020</u>
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Instant Employer	\$33,506.38	\$6,081.00	\$24,005.50	\$18,243.00
2 <sup>nd</sup> Employer	\$0.00	\$20,000	\$0.00	\$18,243.00
Totals:	\$33,506.38	\$26,081.00	\$24,005.50	\$18,243.00

Total Gross Wages Paid: \$101,835.88

21. The claimant worked for the 2<sup>nd</sup> employer during his base period.
22. The claimant earned gross wages working for the 2<sup>nd</sup> employer during the 3<sup>rd</sup> Quarter 2019. During the 3<sup>rd</sup> Quarter 2019, the claimant's gross wages were \$20,000.
23. The claimant did not earn any wages from the 2<sup>nd</sup> employer from April 1, 2019, and June 30, 2019. The claimant worked for the 2<sup>nd</sup> employer during this period. The claimant was not paid wages by the 2<sup>nd</sup> employer for his work performed during this time until the 3<sup>rd</sup> Quarter 2019.
24. The claimant did not earn any wages from the 2<sup>nd</sup> employer between October 1, 2019, and December 31, 2019. The claimant worked during this time for the 2<sup>nd</sup> employer. The 2<sup>nd</sup> employer did not pay the claimant wages during this time.
25. The claimant did not earn any wages from the 2<sup>nd</sup> employer between January 1, 2020, and March 31, 2020. During this time, the claimant was working approximately 2-5 hours per week for the 2<sup>nd</sup> employer.
26. The claimant's total gross wages from the 2<sup>nd</sup> employer between April 1, 2019, and March 31, 2020, were: \$20,000.
27. The 2<sup>nd</sup> employer issues the claimant paper payroll checks. The claimant does not have copies of the paper checks.
28. On a Custom Transaction Detail Report from the 2<sup>nd</sup> employer's establishment from January 2019 through December 2019, the following gross paid wage information is listed for the claimant:

<u>Type</u>	<u>Date</u>	<u>Amount</u>
Paycheck	07/05/2019	\$5,000.00
Paycheck	07/19/2019	\$5,000.00
Paycheck	08/02/2019	\$5,000.00
Paycheck	08/16/2019	\$5,000.00
		\$20,000.00

29. On a 2019 W-2 from the 2<sup>nd</sup> employer's establishment, the total gross wages listed for the claimant are: \$20,000.
30. On a 2020 W-2 from the 2<sup>nd</sup> employer's establishment, the total gross wages listed for the claimant are: \$2,000.
31. In a letter dated November 12, 2021, the 2<sup>nd</sup> employer's Executive Director wrote: "[Claimant] was employed as Director of Camp [employer] beginning February 17, 2019, until June 19, 2020, when it was determined unsafe to operate in summer 2020 due to the Pandemic. For camp work prior to June 19, 2020, [claimant] was paid \$2,000."
32. The 2<sup>nd</sup> employer issued the claimant's paycheck for \$2,000 referenced in the November 12, 2021, letter from the 2<sup>nd</sup> employer on or about June 26, 2020.
33. The claimant performed part-time work for the 2<sup>nd</sup> employer during the 2<sup>nd</sup> Quarter 2019, 4<sup>th</sup> Quarter 2019, and 1<sup>st</sup> Quarter 2020 in a part-time capacity a few hours per week performing such tasks as interviewing staff and parents and working on registration. The claimant is not paid by the 2<sup>nd</sup> employer until the summer as the 2<sup>nd</sup> employer is a non-profit summer camp that does not receive funding until the summer months.

### 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 as follows. Consolidated Finding # 10, which states the claimant had reasonable assurance of re-employment for the subsequent academic year, is not a factual finding. It is a legal conclusion, 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."). We further reject the portions of Consolidated Findings # 11 and 15 that find the claimant's second employer is a religious organization, as this is also a legal conclusion reserved to the Board at this stage of proceedings. Finally, there appears to be a typographical error in Consolidated Finding # 20, which states that the claimant earned \$18,243.00 from the 2<sup>nd</sup> employer in the 1<sup>st</sup> quarter of 2020. As the review examiner later found, consistent with the record, that the claimant did not earn any wages from his 2<sup>nd</sup> employer during the 1<sup>st</sup> quarter of 2020, we believe that the review examiner intended Consolidated Finding # 20 to reflect that fact.

In adopting the remaining findings, we deem 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 entitled to benefits during the period on appeal.

Since the claimant is a professional employee of an educational institution, we turn to the portions of G.L. c. 151A, § 28A, which state, 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, 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.

Upon review of the record, we conclude that the letter issued to the claimant on June 11, 2020, was sufficient to provide the claimant with reasonable assurance of re-employment for his teaching position in the 2020–21 academic year. *See Consolidated Finding # 9.* Therefore, pursuant to G.L. c. 151A, § 28A, the claimant is not entitled to any unemployment benefits based upon the wages he earned from his full-time work as a teacher during the 2019–20 academic year.

However, the claimant's teacher position was a 10-month, academic-year position, meaning that he was free to take the summer off or pursue other full- or part-time work during the summer break. *See Consolidated Findings ## 5, 8, 9, and 11.* In addition to his work as a teacher, the claimant worked for a second employer as a Camp Director. *Consolidated Finding # 11.* Because the claimant's work as a Camp Director was distinct from the teaching position for which he received reasonable assurance, his based period wages from this second employer may not be excluded under G.L. c. 151A, § 28A.

Consolidated Findings ## 20 and 26 provide that the claimant earned a total of \$20,000 during his base period from services performed as a Camp Director. As these wages are not excluded under G.L. c. 151A, § 28A, the claimant 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 year within the meaning of G.L. c. 151A, § 28A(a), in his full-time teaching position, and he is disqualified from receiving benefits during the relevant period based upon wages earned in that position. We further conclude that G.L. c. 151A, § 28A(a), does not preclude the award of benefits based upon the claimant's other base period earnings.

The review examiner's decision is affirmed in part and reversed in part. For the period between June 21, 2020, and August 29, 2020, the claimant is entitled to a weekly benefit amount based only upon \$20,000 in base period earnings, if he is otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 13, 2022**



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](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