

**The claimant, a teaching assistant for the employer's school system, received reasonable assurance of re-employment to her regular full-time job in the 2020-21 academic year. However, she worked two other jobs during her base period. As there is no indication that she had reasonable assurance for these other jobs, her base period wages from these two positions may be used to establish the claimant's monetary eligibility for benefits in the period between academic years.**

**Board of Review  
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**Issue ID: 0059 5565 41**

### 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 18, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on May 6, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on September 2, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant, a teaching assistant 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 findings of fact pertinent to the claimant's base period earnings. 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 claimant, a teaching assistant, was not entitled to any benefits during the summer of 2020 because she had reasonable assurance of re-employment for the subsequent academic year for that 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 started working as a special education high school Teaching Assistant for the instant employer, “W”, in September 2013. “W” is a municipality.
2. The claimant is a union member.
3. The claimant worked 32.5 hours per week as a special education high school Teaching Assistant for “W” during the 2019–2020 school year until mid-March 2020. She was paid through the end of the 2019–2020 school year, which ended on or about 6/18/20.
4. The claimant filed an unemployment insurance claim and obtained an effective date of her claim of 6/14/20.
5. The claimant has two base period employers, another municipality, “N”, and the instant employer, “W”. The base period of the above claim is from 4/1/19 to 3/31/20.
6. The claimant received reasonable assurance letters from “W” for the 2019–2020 school year and previous school years.
7. The claimant received a letter from “W” on 5/15/20 informing her that she had reasonable assurance of re-employment for the 2020–2021 school year.
8. The claimant worked as a special education high school Teaching Assistant at “W’s” summer program during the summer of 2019.
9. The claimant’s rate of pay for “W’s” summer program is the same as her rate of pay during the regular school year.
10. The claimant worked an average of 19 hours per week and earned a total of \$2,332.25 while working at “W’s” summer program during the summer of 2019.
11. The claimant must re-apply to work at “W’s” summer program each year. She is not required to re-apply each year for her school-year Teaching Assistant position with “W”.
12. The claimant is not required to work for “W” during the summer in order for her to work during the school year.
13. The claimant worked as a special education high school Teaching Assistant at “W’s” summer program during the summer of 2020. She worked 7.5 hours per week for the duration of the program.
14. The claimant worked at “N’s” summer camp program during the summer of 2019 and earned \$2,910.00.

15. “N” did not offer the claimant work for the summer of 2020.
16. “W’s” High School Principal and the “W’s” School Superintendent e-mail school employees before the start of each school year to inform school employees when to return to work.
17. The claimant returned to work for “W” for the 2020-2021 school year on or about 8/31/20, as a special education high school Teaching Assistant.
18. The claimant received a \$0.50 per hour increase in pay for the 2020–2021 school year. Her work schedule for the 2020–2021 school year was the same as the 2019-2020 school year.

### 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. The portion of Consolidated Finding # 6, which characterizes the letters received by the claimant as “reasonable assurance” letters 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). 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 any benefits during the summer of 2020.

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.

Because the employer provided the claimant with a written offer on May 15, 2020, to return to her same position in the 2020–2021 school year under the same economic conditions, we agree with the legal conclusion that the claimant received reasonable assurance of re-employment in the next academic year. *See Consolidated Finding # 7.* 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 teaching assistant during the 2019–2020 academic year.

However, the claimant's teaching assistant 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 ## 11 and 12.* During her base period, the claimant also worked for one of the employer's summer programs. *See Consolidated Findings ## 10 and 13.* Because the claimant's summer work was under a separate contract from her academic-year instructional assistant 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.

The claimant also worked at a summer camp for another employer during her base period. *See Consolidated Finding # 14.* As this position was separate from the job for which the claimant received reasonable assurance, her based period wages from her work at this other employer's summer camp also may not be excluded under G.L. c. 151A, § 28A.

Consolidated Findings of Fact ## 10 and 14 provide that the claimant earned a total of \$5,242.25 during her base period from services performed in positions distinct from the full-time teaching assistant position for which she received reasonable assurance. Therefore, 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 period within the meaning of G.L. c. 151A, § 28A(b), in her full-time teaching assistant job, and she 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(b), 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 week beginning June 21, 2020, the claimant is entitled to a weekly benefit amount based only upon \$5,242.25 in base period earnings, if she is otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 23, 2021**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, Esq. 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