

The employer testified that it gave the claimant, a substitute teacher, a letter saying they would continue to employ him in the next academic year. However, the letter is not in evidence and there is nothing in the record about the economic terms of the position for the next year. Board held the employer did not sustain its burden to show that the offer was for economic terms that were not substantially less than the prior academic period. The claimant did not have reasonable assurance and is eligible for benefits under G.L. c. 151A, § 28A(a).

Board of Review
19 Staniford St., 4th 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: 0062 9681 95

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, effective April 19, 2020, which was denied in a determination issued on February 26, 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 the agency's initial determination and denied benefits in a decision rendered on July 9, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had reasonable assurance of re-employment in the subsequent academic term and, thus, he 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 had reasonable assurance of re-employment in the subsequent academic year because he received an offer letter from the employer on April 29, 2020, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant retired as a teacher with the employer in June, 2019.

2. In December 12, 2019, the claimant began employment as a substitute teacher for the employer.
3. The claimant does not have a set schedule with the employer.
4. The employer offers work to the claimant as it becomes available.
5. In March, 2020, the employer closed due to COVID-19 related school closures.
6. The claimant is not guaranteed employment as a substitute during each academic year.
7. The employer did not offer work to the claimant for the remainder of the 2019–2020 school year which ended in June 2020.
8. On April 29, 2020, the employer issued a letter to the claimant notifying him that the employer will continue to employ him during the 2020-2021 school year.
9. The employer re-opened its schools on September 15, 2020. The employer held in-person classes 4 days a week and a remote day on Mondays.

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. Upon such review, the Board adopts the review examiner’s findings of fact and deems them to be supported by substantial and credible evidence. However, we disagree with the review examiner’s conclusion that the claimant was given reasonable assurance of re-employment for his substitute teaching job.

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:

- a. with respect to service performed in an instructional . . . 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 . . . 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; . . .

The U.S. Department of Labor (DOL) has released guidance pertaining to the analysis of reasonable assurance. There must be a written, oral, or implied offer from a person with authority to offer employment, the offer is for a job in the same capacity (i.e., professional or non-professional), and the economic conditions of the offer must not be considerably less than in the prior academic period. DOL Unemployment Insurance Program Letter (UIPL) No. 5-17 (Dec. 22, 2016), part 4(a).

In this case, the review examiner found that the claimant received a letter from the employer on April 29, 2020, notifying him that the employer would continue to employ him as a substitute teacher for the 2020–2021 academic year. *See* Finding of Fact # 8. However, the employer did not present the letter as evidence and there is nothing else in the record from which we can determine whether or not the economic conditions of the position for the 2020–2021 academic year would be considerably less, (*e.g.*, whether he continued to be paid at the same daily rate). It is the employer’s burden to show that it provided reasonable assurance of re-employment to the claimant. *See* Board of Review Decision 0016 2670 84 (Jan. 29, 2016). Without such evidence, the employer has not met its burden. Thus, we do not agree with the review examiner’s conclusion that this letter constituted reasonable assurance of re-employment for the 2020-2021 academic year.

In his appeal to the Board, the claimant urges us to consider the fact that he was unable to teach summer courses at a Rhode Island community college due to the COVID-19 public health emergency. However, the issue before us concerns only whether the claimant had reasonable assurance from the employer, a Massachusetts school district. It is worth noting that, as a result of our decision, the claimant is entitled to the maximum allowable weekly benefit amount of unemployment benefits during the period before us, June 14 – September 5, 2020. He is entitled to that maximum amount based upon his earnings from the instant employer alone, including both the full-time teaching wages and substitute teaching wages paid during his base period (April 1, 2019 – March 31, 2020). In short, the Rhode Island employment, whether lost or not over the summer, does not change the amount of benefits which he is entitled to receive.

We, therefore, conclude as a matter of law that the employer has failed to show that the claimant received reasonable assurance of re-employment for the subsequent academic period within the meaning of G.L. c. 151A, § 28A.

The review examiner's decision is reversed. The claimant is entitled to benefits during the period from June 14, 2020, through September 5, 2020, if he is otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 29, 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 apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**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