

**The claimant paraprofessional received reasonable assurance of re-employment to her regular full-time job in the 2020-21 academic year. However, she worked three other jobs during her base period. As there is no indication she had reasonable assurance for these other jobs, her base period wages from these three positions 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: 0063 4698 29**

### 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 19, 2020. She filed a claim for unemployment benefits with the DUA but was denied benefits in a determination issued on February 25, 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 June 4, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant, a Special Education Aide 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 evidence about the claimant's base period earnings. Thereafter, the review examiner issued his 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, 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. On 09/04/18, the claimant began working full-time as a union Special Education Aide for this employer's public-school system.

2. The claimant continues to work for this employer and there has been no break in her fulltime union employment.
3. The claimant is paid an annual salary for her fulltime union work.
4. During the summer of 2019, the claimant worked as a Camp Director for the instant employer (City [A]). This position began on 06/24/19 and ended on 08/23/19. This position was full-time summer seasonal work. The claimant was paid weekly, and the claimant's total gross wages paid for this work was \$6,935.00.
5. The claimant also had other work that she performed for other departments and employers during the period from 04/01/19 through 03/31/20.
6. The claimant worked as the Director of the [City A] Parks and Recreation Department's Vacation Camps program. The claimant was paid at a rate of \$20.00 per hour and she would be sent an e-mail to apply to work various vacation camp programs. The claimant worked in four separate vacation camps typically Monday through Friday from 7:30 a.m. to 5:30 p.m. The first vacation camp began on 04/15/19 and ended on 04/19/20. The second vacation camp began 06/24/19 and ended 06/28/19. The third vacation camp began on 08/19/19 and ended on 08/23/19. The fourth vacation camp worked by the claimant began on 02/01/20 and ended on 02/15/20. The total gross wages the claimant received for her vacation camp work was \$2,917.25.
7. The claimant also worked part-time as the On-Site Coordinator of an after-school program, [City A] Community Education, Monday through Friday 3:15 p.m. to 4:30 p.m. from 12/01/19 through 03/31/20. The total gross wages paid to the claimant from this employer was \$1,937.50.
8. The claimant also worked part-time as a File Clerk for the employer [Employer B] from 04/05/19 through 11/15/19. The claimant does not recall her hourly rate, but her total gross wages paid were \$2,371.08. The claimant believes that during the 2nd quarter of 2019, this employer paid her gross wages of \$1,167.00, during the 3rd quarter of 2019, her wages were \$695.04, and, during the 4th quarter of 2019, her gross wages from this employer were \$509.04.
9. On 06/05/20, the claimant was sent the usual letter of reasonable assurance from the instant employer noting that she would be returning to work following the summer break period.
10. On 06/19/20, the claimant stopped working due to the usual period of summer break.
11. In past years the claimant had worked for this same employer under the same employer number in non-union seasonable summer camp jobs. In 2020, the

claimant did some summer camp counseling work, but the seasonal work was less than in past years due to covid-19.

12. There is no guarantee of seasonal work hours during the period of summer break.
13. On 06/21/20, the claimant filed a claim for unemployment benefits effective 06/21/20 because there was less non-union summer camp seasonal work available.
14. On 02/25/21, the claimant was sent a Notice of Disqualification because she had reasonable assurance of ongoing fulltime union work following the period of summer break.
15. The claimant requested a hearing because she had less non-union summer camp seasonal work than in past summers.
16. The claimant returned to fulltime union work following the summer break period with a promotion to Behavior Therapist and an increase in her union annual salary.

### 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 # 9, which describes the employer's June 5, 2020, return-to-work letter as a "reasonable assurance" letter is not a finding of fact, but a question of law, which the Board must decide on appeal. *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."). 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 eligible for benefits from the week beginning June 21, 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, in a letter issued to the claimant prior to the end of the 2019–2020 academic year, the employer had provided the claimant with reasonable assurance of re-employment for the subsequent academic year. *See Consolidated Finding # 9.* We believe that this conclusion is reasonable in relation to the record and consistent with applicable law. 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 Special Education Aide during the 2019–2020 academic year.

However, the claimant's Special Education Aide 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 ## 10 and 16.* During the summer of 2019, the claimant worked as a Camp Director for the employer. *Consolidated Finding # 4.* Because the claimant's summer work was under a separate contract from her full-time Special Education Aide position, and there is no indication she received reasonable assurance for her Camp Director position, her wages from that position may not be excluded under G.L. c. 151A, § 28A.

During her base period, the claimant also worked as an On-Site Coordinator for one of the employer's after-school programs and as the Director of the employer's Parks and Recreation Department's Vacation Camps program. *Consolidated Findings ## 6 and 7.* Both of these positions were distinct from her work as a Special Education Aide, with different pay rates and hours. As these two positions were separate from the job for which the claimant received

reasonable assurance, her based period wages from both positions may not be excluded under G.L. c. 151A, § 28A.

Additionally, the claimant worked as a file clerk for a second employer during her base period. Consolidated Finding # 8. As this position was also distinct from her full-time Special Education Aid position, her base period wages from this second employer may not be excluded under G.L. c. 151A, § 28A.

Consolidated Findings of Fact # 4, 6, 7, and 8 provide that the claimant earned a total of \$14,160.83 during her base period from services performed in positions distinct from the full-time Special Education Aide 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 paraprofessional 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 \$14,160.83 in base period earnings, if she is otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 29, 2021**



Charlene A. Stawicki, Esq.  
Member



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](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