

Claimant, an adjunct faculty member, received a verbal job offer to work in the fall in the same capacity as the prior semester. But, because there was no discussion regarding the financial terms, there was insufficient evidence to show that the offer was not considerably less than the prior academic term. Board held that the employer did not provide reasonable assurance of reemployment within the meaning of G.L. c. 151A § 28A, and the claimant may not be denied benefits.

**Board of Review
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Issue ID: 0080 2815 31

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 his position with the employer on May 4, 2023. He filed a claim for unemployment benefits with the DUA, effective May 22, 2022. In a determination issued on June 15, 2023, DUA denied benefits for the period from May 14, 2023, through May 20, 2023. 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 August 19, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had been given a reasonable assurance of reemployment for the subsequent academic period, 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, an affiliated faculty member, had reasonable assurance of reemployment within the meaning of G.L. c. 151A, § 28A, 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 first worked for the employer, a college, in 2011, as a part-time instructor. In the fall of 2014, the claimant became a consistent faculty member, or an affiliated faculty member, for the employer.

2. The claimant teaches a variety of classes for the employer, including public speaking, global communication, cultural communication, public diplomacy, and public affairs.
3. In 2014, the claimant had one course cancelled due to enrollment issues.
4. In 2018, the employer had to reassign one of the claimant's public speaking classes to another faculty member due to seniority issues.
5. Since 2014, the employer has not cancelled any of the claimant's assigned classes due to enrollment issues.
6. Since 2018, the employer has not reassigned any of the claimant's assigned classes.
7. The employer can only assign the claimant up to four classes an academic year, per their union contract.
8. For the fall 2022 semester, the claimant taught three courses for the employer, cultural communication, public affairs, and public diplomacy.
9. For the spring 2023, the claimant taught one course for the employer, intercultural communication.
10. During the spring 2023 semester, the claimant confirmed his availability to teach for the fall 2023 semester with his department chair. The claimant confirmed that he was available to teach courses for the fall 2023 semester.
11. In March 2023, the employer's department chair verbally offered the claimant 3 courses for the fall 2023 semester. The claimant verbally accepted the offer of the 3 courses.
12. The employer then listed the claimant's 3 courses for students to enroll in for the fall 2023 semester. The claimant's 3 classes were contingent upon student enrollment.
13. The spring 2023 semester ended on May 4, 2023. The claimant was not offered any work during the summer, as the employer does not consider the summer classes to be part of their regular academic program.
14. The claimant filed a claim for unemployment insurance with an effective date May 22, 2022 (2022-01 claim). The expiration date of the 2022-01 claim is May 20, 2023. During the base period of the 2022-01 claim, the claimant only worked for the employer as an affiliated faculty member.

15. On June 15, 2023, Department of Unemployment Assistance (DUA) issued the claimant a Notice of Disqualification, stating, “It has been established that you have performed services for an educational institution during the most recent academic year or term and there is a contract or a reasonable assurance that you will perform services for an educational institution during the next school year or term. Therefore you may not receive a benefit based on wages earned working for an educational institution for weeks commencing during the period between these academic years or terms.”
16. The Notice of Disqualification further stated, “Inasmuch as you have no wages earned working for other than an educational institution or insufficient [sic] such wages to meet the eligibility requirements of M. G. L. chapter 151A, s. 24 (a) you are not eligible to receive benefits for the period beginning 5/14/2023 and through 5/20/2023.”
17. Per the employer’s union agreement, the employer was required to send fall appointments by July 15 of each summer. At the time of the DUA hearing, July 6, 2023, the employer was preparing the claimant’s fall appointment letter.

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 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, as discussed more fully below, we disagree with the review examiner’s conclusion that the claimant is disqualified pursuant to G.L. c. 151A, § 28A.

As an academic employee of an educational institution, the claimant’s eligibility for benefits during the relevant period is properly analyzed under G.L. c. 151A, § 28A, which states, 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 . . . 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 burden to establish that an adjunct professor has been provided with reasonable assurance lies with the employer. *See* Board of Review Decision 0016 2670 84 (Jan. 29, 2016).

The U.S. Department of Labor (DOL) has released guidance pertaining to the analysis of reasonable assurance for adjunct professors. In Unemployment Insurance Program Letter (UIPL) No. 5-17 (Dec. 22, 2016), the DOL sets forth an initial set of criteria for determining whether a claimant is entitled to benefits between academic periods. 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. Id. at part 4(a), pp. 4–5.

Here, the review examiner found that the claimant accepted the employer’s oral offer to return for the fall 2023 semester in the same capacity. Findings of Fact ## 1 and 11. Since the oral offer of re-employment was given by the department chair, it is reasonable to infer that the offer was issued by a person with the authority to do so. However, there is no evidence in the record that indicates that, at the time the offer was made, the parties discussed what the claimant’s compensation would be. The record only reflects that the claimant was offered three courses for the fall semester, and that the classes were contingent upon enrollment. Findings of Fact ## 11 and 12. Because the verbal offer did not include what the claimant would be earning when he returned in the fall, the employer has failed to show that the economic conditions of the offered position would not be considerably less than the prior academic year.

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

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week ending May 20, 2023, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 15, 2024



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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

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.

DY/rh