

Claimant, an adjunct professor, received a written job offer to return to work in the same capacity as the prior academic period. But the job offer did not contain any financial terms. As nothing in the record showed that, at the time of the offer, the employer communicated that the economic terms of the returning position would not be considerably less than her most recent academic term, Board held that there was no reasonable assurance within the meaning of G.L. c. 151A § 28A. The claimant was eligible for benefits between terms.

**Board of Review
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Issue ID: 0080 7464 90

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 her position with the employer on May 18, 2023. She filed a claim for unemployment benefits with the DUA, effective July 2, 2023, but was denied benefits during the period from July 2, 2023, through August 26, 2023, in a determination issued on September 21, 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 December 2, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had been given reasonable assurance of reemployment for the subsequent academic period, and, thus, she 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 adjunct professor had reasonable assurance 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 began working as an adjunct faculty member for the employer, a private college, in the fall of 2014.

2. The claimant currently receives a stipend in the amount of \$4,500 per class. The stipend was recently increased from \$3,900 to \$4,500 per class.
3. During the spring semester of 2016, the claimant taught 3 courses; during the fall of 2016, [the] claimant taught 3 courses; during spring semester of 2017, the claimant taught 2 courses; during the fall semester of 2017, the claimant taught 2 courses; during the spring semester of 2018, the claimant taught 2 courses; during the fall of 2018, the claimant taught 2 courses; during the spring semester of 2019, the claimant taught 3 courses; during the fall semester of 2019, the claimant taught 3 courses; during the spring of 2020, the claimant taught 2 courses; during the fall of 2020 and spring of 2021, the claimant did not teach any courses due to [COVID-19]; during the fall semester of 2021, the claimant taught 2 to 3 courses; during the spring semester of 2022, the claimant taught 2 courses; during the fall semester of 2022, the claimant taught 3 courses; and during the spring semester of 2023, the claimant taught 3 courses.
4. The typical academic year runs from the fall to spring semester. The employer does offer their students a 7-week online course selection under their Vanloan program during the summer semesters and over the January intersession. Summer work is not guaranteed by the college.
5. The 2022–2023 school year ended during the week of 5/12/23 through 5/18/23.
6. At the close of the academic year, the employer issued the claimant a letter of reasonable assurance on 5/19/23 via email. The letter indicated that the employer was giving the claimant formal notice of reasonable assurance for her to return to her position at the beginning of the start of the 2023–2024 school year on 9/1/23.
7. The claimant accepted the offer to return to her position for the 2023–2024 school year. She started back in her position as an Adjunct Professor on 8/30/23.
8. The claimant was offered to teach 3 courses for the fall semester of 2023. The claimant is teaching 3 courses during the fall semester of 2023.
9. The claimant filed a claim for unemployment benefits on 7/2/23.
10. On 9/21/23, the DUA issued the claimant a Notice of Disqualification finding her ineligible for benefits under Section 28A.
11. On 9/22/23, the claimant appealed the Notice.

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. After such

review, the Board adopts the review examiner's findings of fact except as follows. The Board rejects the portion of Finding of Fact # 6, which states that "the employer issued the claimant a letter of reasonable assurance," as it draws a legal conclusion. In adopting the remaining findings, we deem 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 set 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.

The findings reflect that the employer's offer to return for the 2023–24 academic year was in the same capacity, *i.e.* as an adjunct professor. Findings of Fact ## 1, 6, and 7. Inasmuch as the letter was signed by a human resources representative, it is reasonable to infer that the offer letter was issued by a person with the authority to do so.¹ However, the offer letter contained no substantive information as to the number of class offerings or how much the claimant would be paid.

We note that the review examiner's Findings of Fact ## 2 and 8 state that the employer offered the claimant three classes, that she actually taught three classes, and that she was paid a \$4,500 stipend

¹ Exhibit 2, the offer letter, while not explicitly incorporated into the review examiner's findings, it is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

per class. However, these findings were made in hindsight. Neither the offer letter nor any other evidence in the record establishes that, at the time it was made, the employer had informed the claimant what she would be earning when she returned in the fall. Thus, the evidence fails 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 July 8, 2023, through August 26, 2023, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 29, 2024



Paul T. Fitzgerald, Esq.
Chairman



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

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