

Although the employer provided the claimant with a written offer of re-employment as a substitute teacher for the subsequent academic year, the offer was only for a position as a day-to-day substitute teacher. The claimant worked as a long-term substitute teacher in the majority of the previous academic year at a substantially higher hourly rate. Held the employer did not show that it offered the claimant reasonable assurance of re-employment pursuant to G.L. c. 151A, § 28A, because the economic terms of the offer were considerably less than the prior academic year.

**Board of Review
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Issue ID: 352-MNR5-JDLP

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 filed a claim for unemployment benefits with the DUA, effective December 29, 2024. In a determination issued on July 28, 2025, he was approved for benefits beginning the week of June 15, 2025. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner reversed the agency's initial determination and denied benefits in a decision rendered on August 28, 2025. 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 re-employment in the next academic year, and, thus, he 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. 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 during the period between June 15, 2025, and August 23, 2025, because he had reasonable assurance of re-employment in the subsequent academic year for his substitute teaching position, 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 filed a claim for unemployment benefits effective December 29, 2024, with a benefit year end of December 27, 2025.
2. The claimant was hired as a day-to-day substitute for the employer, a municipal school system, on August 3, 2023. The claimant is still employed.
3. As a day-to-day substitute, the claimant earns an hourly wage of \$23.18.
4. Per the collective bargaining agreement between the employer and employees, at the beginning of each new school year, employees hired as day-to-day substitutes begin work as day-to-day substitutes, regardless of whether they finished the previous school year as a day-to-day substitute or as a long-term substitute.
5. During the 2023-2024 school year, the claimant transitioned to a long-term substitute position in approximately October 2023.
6. As a long-term substitute, the claimant earns an hourly wage of \$38.78.
7. The claimant was offered reasonable assurance of re-employment as a day-to-day substitute for the 2024-2025 school year in an email sent by the employer. The claimant did not sign the letter.
8. During the 2024-2025 school year, the claimant worked for the employer initially as a day-to-day substitute, and transitioned to a long-term substitute position in October 2024.
9. The last day of school for the 2024-2025 school year was June 16, 2025.
10. On June 20, 2025, the employer sent the claimant a letter of reasonable assurance of reemployment as a day-to-day substitute for the 2025-2026 school year by email.
11. The employer's records show that the claimant has neither opened nor signed the reasonable assurance letter.
12. The first day of school for the 2025-2026 school year was August 25, 2025.
13. The claimant has not accepted any assignments as of the date of the hearing (August 27, 2025), but has been in contact with the employer indicating interest in a long-term substitute position.

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, except the portion of Findings of Fact ## 7, 10, and 11, which characterize the letters from the employer as letters of “reasonable assurance.” This is a mixed question of fact and law, which at this point in the proceedings is for the Board of Review to decide. 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 entitled to benefits during the period between June 15, 2025, and August 23, 2025.

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

In 2016, the U.S. Department of Labor (DOL) released updated guidance pertaining to the analysis of reasonable assurance. In its Unemployment Insurance Program Letter (UIPL) 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 must be 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. “Considerably less” means that the claimant must earn at least 90% of the amount he earned in the prior academic period. Id. at part 4(a)(3), p. 5. Further, we have held that the employer has the burden to prove that it provided the claimant with reasonable assurance of re-employment. *See* Board of Review Decision 0016 2670 84 (Jan. 29, 2016).

In the present case, there is no dispute that, on June 20, 2025, the employer provided the claimant with a letter offering him re-employment as a day-to-day substitute teacher for the 2025–26 academic year. Finding of Fact # 10. Because the claimant worked as a substitute teacher in the previous academic year, the June 20th written offer of re-employment met the first and second prerequisites for reasonable assurance articulated in UIPL 5-17. *See* Finding of Fact # 8.

However, the findings of fact show that the June 20th offer of re-employment was not for the same or substantially similar economic terms as the previous academic year. Although the claimant was initially hired as a day-to-day substitute teacher during the 2024–25 academic year, he worked the majority of that year as a long-term substitute. Findings of Fact # 8 and 10. Consequently, the employer's offer of work as a day-to-day substitute teacher for the 2025–26 academic year represented an approximately 40% reduction in hourly wages when compared to the claimant's rate of pay as a long-term substitute during the 2024–25 academic year. Findings of Fact # 3, 6, 8, and 10. Further, we can reasonably infer from the nature of day-to-day substitute work that the claimant is less likely to work a certain number of hours in a given week when compared to his regular schedule as a long-term substitute teacher. As there was no indication the claimant was offered or otherwise assured that he would resume working a long-term substitute teaching position during the 2025–26 academic year, the employer has failed to show that the economic conditions of the offer it made to the claimant on June 20th were not considerably less than in the prior academic period.

We, therefore, conclude as a matter of law that the employer has failed to sustain its burden to show that the claimant had reasonable assurance of re-employment for his substitute teaching position 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 of June 15, 2025, through August 23, 2025, if otherwise eligible.

N.B. The record indicates that the claimant may have declined offers of suitable work following the start of the 2025–26 academic year. For this reason, we are asking the agency to investigate the claimant's eligibility for benefits under the provisions of G.L. c. 151A, §§ 29 and 1(r), as of August 24, 2025.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 20, 2025



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

**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