

An assumption that the claimant, as substitute teacher, would return to work in the fall because the employer had re-hired him in past years is insufficient to meet the employer's burden to show that it provided reasonable assurance of re-employment within the meaning of G.L. c. 151A, § 28A.

**Board of Review
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Issue ID: 352-N3L9-L94D

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, which was denied for the period between June 1, 2025, and August 23, 2025, in a determination issued on September 10, 2025. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on October 22, 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. 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 was not entitled to benefits during the period between the 2024–25 and 2025–26 academic years 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 has worked as an on-call substitute teacher for the employer since 2018.
2. The claimant receives assignments via text message.

3. The claimant accepts or refuses assignments based upon his availability.
4. The claimant filed a claim effective 5/18/25 because a coworker talked to him about the unemployment process.
5. During the base period of his claim, the claimant did not work for any other employer.
6. The employer offered the claimant assignments through the end of the 2025 school year.
7. The claimant typically worked about one assignment each week during the school year.
8. June 16, 2025, was the last day of school during the 2024-2025 school year.
9. In August 2025, the employer contacted the claimant to ask if he wanted to be put on the list of returning substitute teachers.
10. The claimant confirmed that he did want to be put on the list.
11. The employer and the claimant followed this same process each year since he was hired in 2018.
12. Each fall, the claimant returned to his position as a day-to-day substitute teacher for the employer.
13. The claimant is currently still working as a day-to-day substitute teacher for the employer.

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 reject the review examiner's legal conclusion that the claimant is not entitled to benefits.

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 the present case, the review examiner concluded that, even though the employer had not provided the claimant with an explicit written offer of re-employment, its past practice of re-hiring the claimant prior to the start of the subsequent academic year was sufficient to meet its burden under G.L. c. 151A, § 28A. *See* Findings of Fact ## 11 and 12. This was in error.

Under the federal guidelines, a claimant will not have reasonable assurance of re-employment unless he receives a *bona fide* offer of re-employment in the subsequent academic year in the same capacity and under the same or similar economic terms as the previous academic year. Such an offer may be written, oral, or implied, and must be made by an individual with actual hiring authority. *See* U.S. Department of Labor Unemployment Insurance Program Letter No. (UIPL) 5-17, (Dec. 22, 2016), 4(a). In considering these requirements, the Board has held that an employer's silence does not, by itself, constitute reasonable assurance of re-employment. Board of Review Decision 0049 7404 34 (Jul. 22, 2021).

In this case, there was no evidence that a written, verbal, or implied offer was made to the claimant until August, 2025. Findings of Fact ## 9 and 10. More specifically, the claimant testified that the employer did not contact him about his return to work until a few days before the 2025–26 academic year was scheduled to start, the week beginning August 24, 2025.¹ Absent evidence indicating that the employer communicated its intention to rehire the claimant prior to that phone call, and we see none, the employer did not provide the claimant with reasonable assurance of re-employment at any point between the end of the 2024–25 academic year on June 16, 2025, through the week before the subsequent academic year.

We, therefore, conclude as a matter of law that the employer did not meet its burden under G.L. c. 151A, § 28A, to show that it provided the claimant with reasonable assurance of re-employment.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the weeks of June 15, 2025, through August 23, 2025, if otherwise eligible.

¹ The claimant's uncontested testimony in this regard 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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 14, 2025



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**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