

**A building substitute teacher started the school year earning \$175 per day, then filled a position during a leave of absence for the remainder of the academic year as a higher paid attendance officer. The employer’s offer to re-employ the claimant as a building substitute teacher in the following school year at \$150 per day was not 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  
100 Cambridge Street, Suite 400  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: 352-N58M-7LPR**

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 June 29, 2025. In a determination issued on October 29, 2025, he was denied benefits based upon wages earned from the employer during his base period. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner modified the agency’s initial determination in a decision rendered on February 4, 2026, denying benefits during the period from June 29 to September 3, 2025, based upon wages earned from the employer during the claimant’s base period. 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 June 29 and September 3, 2025, because he had reasonable assurance of re-employment for his substitute teaching position in 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 findings of fact are set forth below in their entirety:

1. The employer is a city.

2. The employer operates a school system.
3. The claimant began employment with the employer in January 2024. The employer hired the claimant to work as a building substitute teacher. The employer hired the claimant to work full-time. The employer assigned the claimant to perform his work at one of its schools (“School 1”).
4. The employer’s building substitute teachers work in the employer’s normal school years. These workers do not work in the summer recess periods.
5. A union contract (“Contract 1”) governs the pay rate for the employer’s building substitute teachers. The pay rate for the building substitute teacher position was \$175.00 when the employer hired the claimant.
6. Contract 1 decrees that the employer’s building substitute teachers will return to their positions at the start of each school year unless otherwise notified. Contract 1 decreed this for the 2025-2026 school year.
7. The claimant performed work for the employer in the 2024-2025 school year. The claimant worked in his assigned building substitute teacher position for the period 8/28/2024 to 2/23/2025. The claimant performed substitute teacher duties at School 1 when regular teachers were absent.
8. The employer’s attendance officer left work on a leave of absence. The employer posted a full-time temporary attendance officer position to cover for the attendance officer. This was a salaried administrative position. The employer required candidates to apply for the position. The claimant applied for the position.
9. The employer hired the claimant for the temporary fill-in attendance officer position. Upon hire, the employer told the claimant that the placement in this role was temporary and that he would return to his building substitute teacher role when the attendance officer returned from his leave.
10. The claimant worked in the full-time temporary attendance officer role from 2/24/2025 to the end of the school year on 6/23/2025. The employer paid the claimant \$1,715 per week when he worked in this role. The claimant’s main duty was to ensure that students reported to school. The claimant visited students’ homes to encourage attendance.
11. The employer removed the claimant from the temporary attendance office position because the regular attendance officer planned to return to work.
12. The claimant returned to his normal building substitute teacher role for the 2025-2026 school year. The claimant resumed work in this role at the start of

the school year on 9/3/2025. The pay rates in Contract 1 changed. The claimant's pay rate for the 2025-2026 school year is \$150.00 per day.

### 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 ineligible for benefits.

As an 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, research, or principal administrative 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 actual 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).

During the 2024–25 school year, the claimant worked as a full-time building substitute teacher from August 28, 2024, to February 23, 2025, earning \$175.00 per day, then as a full-time temporary attendance officer from February 24 to June 23, 2025, earning \$1,715.50 per week. *See*

Findings of Fact ## 3, 5, 7, and 10; *see also* Exhibit 3.<sup>1</sup> He resumed working for the employer as a building substitute teacher for the next school year, beginning September 3, 2025. *See* Finding of Fact # 12.

The only evidence of a written, oral, or implied offer to the claimant of re-employment in the next academic term is the employer's undisputed testimony about a provision in the collective bargaining agreement, which states that building substitute teachers will return to their positions in the following school year unless otherwise notified. *See* Finding of Fact # 6. Further, the review examiner found that the collective bargaining agreement provided that the claimant's pay rate as a building substitute teacher in the 2025–26 school year would be \$150.00 per day. Finding of Fact # 12. In light of this record, the employer has not met its burden to show reasonable assurance of re-employment in the next academic year.

Exhibit 3 shows the claimant's weekly gross pay for both his building substitute teacher and attendance officer positions during the 2024–25 school year. The claimant earned \$18,725.00 as a building substitute teacher and \$31,870.18 as an attendance officer, for a total of \$50,595.18. Thus, he earned substantially more money as an attendance officer, \$1,715.50 per week, compared to \$875 per week (\$175 a day times five days) as a building substitute teacher. *See* Findings of Fact ## 5 and 10. The offer to work in the 2025–26 school year as a building substitute teacher at \$150 per day is 51% of the daily rate of pay he had earned as an attendance officer. This falls far short of the requirement that the economic terms of the offer of re-employment must be at least 90% of the amount the claimant earned in the prior academic period.<sup>2</sup> Thus, the employer has failed to establish that it provided the claimant with reasonable assurance of re-employment in the subsequent academic year under economic conditions that were not substantially less. *See* Board of Review Decision 352-MNR5-JDLP (Oct. 20, 2025) (employer's offer for the next school year to work as a day-to-day substitute teacher was not reasonable assurance of re-employment for a claimant, who in the most recent school year was hired as a day-to-day substitute, but then worked as a higher paid long-term substitute teacher for the rest of the academic year).

We, therefore, conclude as a matter of law that the employer did not provide the claimant with reasonable assurance of re-employment as meant under G.L. c. 151A, § 28A.

The review examiner's decision is reversed. The claimant is entitled to receive benefits from June 29 to September 6, 2025, if otherwise eligible.

---

<sup>1</sup> Exhibit 3 is an employer pay record showing pay checks to the claimant from Jan. 11, 2024, to July 3, 2025. 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).

<sup>2</sup> Even without considering the attendance officer pay, the offer to re-employ the claimant as a building substitute teacher in the 2025–26 academic year at \$150 per day, by itself, falls below the 90% threshold, as it is only 85.7% of his prior academic year building substitute teacher daily pay rate of \$175 per day. For purposes of G.L. c. 151A, § 28A, it makes no difference whether the union agreed to this reduced daily rate of pay. These were the terms of the position offered in the subsequent academic year.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 20, 2026**



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](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.

AB/rh