

The employer failed to establish that the claimant could be reasonably assured of any level of pay in the fall 2015 semester. The employer had announced that its paralegal studies program would close in the following year, and in the most recent semester, the claimant's courseload had been reduced and her compensation drastically cut in one course due to enrollment of a single student.

**Board of Review
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Issue ID: 0016 2085 38

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by J. Gangi, 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 9, 2015. She reopened a claim for unemployment benefits with the DUA, which was denied in a determination issued on June 4, 2015. 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 September 15, 2015. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had reasonable assurance of re-employment for the fall, 2015 academic term and, thus, was disqualified, under G.L. c. 151A, § 28A, for the period beginning May 10, 2015, through the end of her claim, which was June 13, 2015. 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 conclusion that the employer offered reasonable assurance of re-employment to the claimant, within the meaning of G.L. c. 151A, § 28A, is supported by substantial and credible evidence and is free from error of law, where the employer had announced that it would stop offering the claimant's paralegal studies program, and it had reduced the claimant's salary in the prior semester due to low enrollment.

Findings of Fact

The review examiner's findings of fact and credibility assessments are set forth below in their entirety:

1. The claimant started working as an Adjunct Professor for the employer, a community college, on 9/6/98.
2. The claimant teaches classes in the Paralegal Studies Program. Such classes include: Civil Rights and Liberties; American Government and Politics; Corporate Law; Introduction to American Law; Wills, Estates, and Trusts; Introduction to Paralegalism; and Litigation.
3. The claimant filed a claim for unemployment insurance benefits on 6/15/14 and obtained an effective date of her claim of 6/15/14. The base period for this claim is from 4/1/13 to 3/31/14.
4. The claimant taught five courses during the Spring 2013 semester, including one Introduction to American Law course, three Civil Rights and Liberties courses, and one Corporate Law course.
5. The claimant taught four courses during the Fall 2013 semester, including one Introduction to American Law course, two Civil Rights and Liberties courses, and one Introduction to Paralegalism course.
6. The claimant taught four courses during the Spring 2014 semester, including one Introduction to American Law course, two Civil Rights and Liberties courses, and one Litigation course.
7. The claimant taught four courses during the Fall 2014 semester, including one Introduction to American Law course, one American Government and Politics course, one Civil Rights and Liberties course, and one Corporate Law course.
8. On 10/28/14, the claimant received a letter from the employer indicating that her tentative assignment for the Spring 2015 semester was one Paralegalism Practicum course. On 11/20/14, the claimant received a letter from the employer indicating that her tentative assignment for the Spring 2015 semester also included one Introduction to American Law course and one Civil Rights and Liberties course, for a total of three courses.
9. Whether the claimant teaches a particular course depends on whether the employer tentatively assigns the course to the claimant and whether there are enough students enrolled in the course.
10. The employer sends the claimant letters describing the claimant's tentative assignments for the following semester, during the current semester. The claimant finds out whether she is teaching courses and/or Directed Studies after the start of school and the end of the add/drop time period. She receives a teaching contract approximately three weeks after the start of the semester.
11. The claimant believed that enrollment in the Paralegal Studies Program started to decline eighteen months ago, as other schools are accredited by the

American Bar Association, and the employer is not. The employer will stop offering the Paralegal Studies Program in December 2016.

12. The claimant taught two courses during the Spring 2015 semester, including one Civil Rights and Liberties course and one Paralegal Practicum course. She taught a Directed Study instead of a full Introduction to American Law course, as one student enrolled in the course. She received \$300 for teaching the Directed Study. She normally received \$3,700 per course.
13. The claimant received a letter from the employer on or around 3/16/15, indicating that her tentative assignment for the Fall 2015 semester included one Wills, Estates, and Trusts course. She received a letter from the employer dated 5/6/15 indicating that her tentative assignment for the Fall 2015 semester also included one Introduction to American Law course and one Civil Rights and Liberties course, for a total of three courses for the Fall 2015 semester.
14. The Spring 2015 semester ended on or around 5/9/15. The claimant reopened the above unemployment insurance claim effective 5/10/15. The Fall 2015 semester begins on or around 9/10/15.

Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate 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 employer had offered the claimant reasonable assurance of re-employment, pursuant to G.L. c. 151A, § 28A.

As an instructional employee performing services for an educational institution, the claimant's eligibility for benefits during the summer of 2015 is properly analyzed under G.L. c. 151A, § 28A, which provides, 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 her decision, the review examiner concluded that the employer had established a pattern of re-employing the claimant under similar conditions and that the offer to teach in the fall, 2015 semester was under the same or better economic terms as her experience in the prior semester. We disagree.

Where the offered courses are contingent upon enrollment, the claimant will be deemed to have reasonable assurance, within the meaning of G.L. c. 151A, § 28A, only where there is a pattern of re-employment under economic conditions that are not substantially less. *See* U.S. Dept. of Labor Unemployment Insurance Program Letter (UIPL) No. 4-87 (Dec. 24, 1986). In the present case, although the employer had offered the claimant three courses during the spring, 2015 semester and offered the same number of courses for the fall, 2015 semester, this is down from the three previous terms, when the claimant had taught four courses in each semester. *See* Findings of Fact ## 5–7. Furthermore, the findings indicate that the employer’s paralegal studies program has become less competitive with other schools because it is non-accredited, and, in fact, the employer will stop offering it as a course of study during the following year. Finding of Fact # 11. This reality hit home during the spring semester, when the claimant’s regular rate of pay of \$3,700 per course was drastically reduced to \$300 for one course due to enrollment by only one student. Finding of Fact # 12. Under these circumstances, the employer has not established that the claimant can be reasonably assured what the economic terms of her fall appointment will be.

Therefore, we conclude as a matter of law that the employer has failed to sustain its burden to show that it provided reasonable assurance of re-employment to the claimant for the fall, 2015 semester, 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 period May 10, 2015, through June 13, 2015, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 24, 2016



Paul T. Fitzgerald, Esq.
Chairman



Judith M. Neumann, Esq.
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT
COURT OR TO THE BOSTON MUNICIPAL 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.

AB/rh