

**BR-121760**

**CLAIMANT APPELLANT:**  
Hearings Docket #591534

**EMPLOYING UNIT:**

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Jodi Ferullo, 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. We conclude that the claimant is eligible for benefits based on his separation from his primary base period school employer, but that the claimant's earnings from this subsidiary base period school employer should not be used to calculate his weekly benefit rate. We further conclude that this employer's offer of part-time work during the upcoming academic year does not constitute reasonable assurance that renders the claimant ineligible for receipt of unemployment benefits, which are based on his separation from his primary base period school employer.

The claimant was separated from his full-time position with another school employer on June 30, 2011. He filed a claim for unemployment benefits with the DUA on July 28, 2011, which was approved in a determination issued on August 18, 2011. This subsidiary school employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on December 16, 2011. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had received reasonable assurance of reemployment with the instant, part-time employer and, thus, was disqualified from all benefits, 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. Only the claimant responded. Our decision is based upon our review of the entire record.

The issue on appeal is whether “reasonable assurance of reemployment” in a part-time adjunct faculty position disqualifies the claimant from receiving benefits based on his other, full-time teaching, base period school wages.

Findings of Fact

The review examiner’s findings of fact are set forth below in their entirety:

1. The claimant began work for the employer, a private college in 1994. The claimant was hired to work as a full-time employee.
2. The claimant held various full-time positions with the employer, such as instructor, department head and vice president, from 1994 until February 2010. (The claimant did not perform any services for the employer from February 2010 until July 15, 2010.)
3. The claimant began in the position of adjunct faculty member for the employer beginning on July 15, 2010.
4. The claimant received a letter of agreement from the employer during the summer of 2010 indicating the name of course that he would be teaching, the location and the salary. The letter indicated that the course could be cancelled if there were insufficient enrollment.
5. The claimant was teaching one course for the employer during the spring of [2011]. The course was a two and a half hour course taught over a ten week period. The claimant was paid \$7,500 to teach the course and was not provided with any benefits with the employer.
6. The claimant was no longer working for the employer as of May 2011 because the course that he was teaching concluded. There was no work available to the claimant during the summer break period.
7. On July 5, 2011 the claimant was sent a letter from the employer inquiring if he would be teaching classes for the 2011-2012 academic year. The letter offered the claimant one course to be taught beginning in late October 2011 through to January 2012 and one course to be taught beginning in January 2012 through to May 2012. The letter indicated that the claimant would be paid \$7,500 to teach each course. The letter also indicated that the courses could be cancelled if there was insufficient enrollment.
8. There was nothing to indicate that there would be insufficient enrollment for the 2011-2012 academic year.
9. The claimant was required to sign and return the July 5, 2011 letter by September 1, 2011. The claimant signed the letter indicating that he would be returning to work in the 2011-2012 academic year. The claimant returned the completed letter to the employer in July 2011.

10. The claimant filed his claim for unemployment benefits on July 28, 2011. The effective date of the claim is July 3, 2011.
11. The claimant worked for another employer, [Brandeis] University, from August 15, 2010 until June 30, [2011]. The claimant worked for that employer as a full-time visiting professor. The claimant's services were no longer needed after June 30, 2011.

### Ruling of the Board

The Board adopts the review examiner's findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

The issue before the Board is whether, and the extent to which, the claimant is disqualified 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, 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....

The review examiner initially found that because the instant base period employer gave the claimant reasonable assurance of reemployment in the upcoming year as an adjunct faculty member teaching one course, the claimant was ineligible for *all* unemployment benefits, despite having been permanently separated from another full-time school employer during his base period. Our review, however, considers the claimant's entire base period employment history in determining his eligibility for benefits.

The claimant had worked as a full-time visiting professor for another school employer during the 2010-2011 academic year until his layoff in June 2011. He earned wages from that full-time job during the base period upon which this claim was filed. During the base period, he simultaneously worked as an adjunct faculty member teaching one class per semester for the instant employer. Since he had reasonable assurance of returning to work as an adjunct faculty member for this employer at the start of the 2011-2012 school year, G.L. c. 151A, § 28A(a), precludes the payment of benefits *on the basis of such services* – that is, on the basis of the wages earned from his part-time adjunct faculty position. We agree with this portion of the review examiner's decision.

However, we do not agree that the claimant's wages from his primary full-time school employer should also be excluded. The U.S. Department of Labor interprets reasonable assurance to require that the economic terms and conditions of the position offered in the second academic period not be substantially less than that of the position held in the prior academic term. *See* Unemployment Insurance Program Letter No. 4-87 (December 24, 1986). Here, the claimant's reasonable assurance was for a part-time educational position – an adjunct faculty member job teaching one course per semester. He was not offered the economic terms and conditions of a full-time position such as he had had as a visiting professor at another school employer. His offer of reasonable assurance, therefore, was for economic terms and conditions that were substantially less than his full-time teaching job. Consequently, in light of this disparity, and relying on the authority guiding federal policy in this particular area over the past 25 years, we conclude that the claimant's reasonable assurance of a part-time adjunct teaching job may not be used to preclude payment of benefits on the basis of wages earned performing full-time teaching elsewhere. *See* BR-109037-OP (August 4, 2009)

We, therefore, conclude as a matter of law that based upon the claimant's reasonable assurance of reemployment with *this* employer, his adjunct faculty wages may not be counted in the award of benefits during the summer period between the two academic years, as required under G.L. c. 151A, § 28A(a). However, the claimant's reasonable assurance of reemployment as an adjunct faculty member by this employer does not preclude the award of benefits during the summer period based upon his wages as a full-time visiting professor.

The review examiner's decision is affirmed in part and reversed in part. The portion of the review examiner's decision that found the claimant ineligible to receive weekly benefits using the claimant's wages from this employer is affirmed. The portion of the review examiner's decision that found the claimant ineligible for benefits using the claimant's full-time wages from his primary base period school employer is reversed. The claimant is entitled to receive benefits based on his wages from his primary base period school employer for the week ending July 9, 2011 and for subsequent weeks if otherwise eligible.

The DUA Determinations Unit shall recalculate the claimant's monetary eligibility for benefits based solely on the base period wages earned from his primary base period school employer.

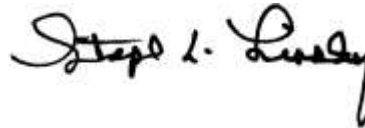
**N.B.:** (1) The DUA Determinations Unit is asked to investigate whether this employer is being charged on this claim. Since the claimant continues to perform work for this employer on a part-time basis, his wages from this employer should not be used to calculate his weekly benefit rate, and this employer should not be charged while the claimant remains employed in this capacity.

(2) The DUA Determinations Unit is also asked to investigate the claimant's work search efforts, pursuant to G.L. c. 151A, § 24(b).

**BOSTON, MASSACHUSETTS**  
**DATE OF MAILING - April 20, 2012**



John A. King, Esq.  
Chairman



Stephen M. Linsky, Esq.  
Member

Member Sandor J. Zapolin did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT**  
**(See Section 42, Chapter 151A, General Laws Enclosed)**

**LAST DAY TO FILE AN APPEAL IN COURT-May 21, 2012**