



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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BEVERLY B WEST
c/o LAW OFFICES OF ROBERT J BEZEMEK
Claimant-Appellant

Case No.: **AO-275718**

OA Decision No.: 3885562
EDD: 0410 BYB: 07/31/2011

DECISION

Attached is the Appeals Board decision in the above-captioned case issued by Board Panel members:

ROY ASHBURN

KATHLEEN HOWARD

This is the final decision by the Appeals Board. The Appeals Board has no authority to reconsider this decision. If you disagree with the decision, please refer to the information attachment which outlines your rights.

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Date Mailed:

JAN 18 2012

Case No.: AO-275718
Claimant: BEVERLY B WEST

The claimant appealed from the decision of the administrative law judge that held the claimant not eligible for unemployment insurance benefits under section 1253.3 of the Unemployment Insurance Code beginning July 31, 2011 and ending when the disqualifying condition no longer exists.

ISSUE STATEMENT

We adopt the administrative law judge's issue statement.

FINDINGS OF FACT

We adopt the first two paragraphs of the administrative law judge's findings of fact.

We add the following: On June 22, 2011, the claimant received a letter advising her that she was "recommended for a one-term, part-time teaching assignment from August 22, 2011 until December 16, 2011 at Laney College. Your assignment is subject to [among other things] minimum class enrollment. . . ."

REASONS FOR DECISION

We adopt the first four paragraphs of the administrative law judge's reasons for decision.

In *Cervisi v. California Unemployment Insurance Appeals Board* (1989) 208 Cal.App.3rd 635, the faculty assignment form given hourly instructors in a community college stated that "employment is contingent upon adequate class enrollment." The court held that section 1253.3(g) applied and the claimants lacked reasonable assurance of employment.

In this case, the claimant's assignment for the fall term 2011 was explicitly made contingent upon, among other things, "minimum class enrollment." Accordingly, she is in the same position as the claimants in *Cervisi*, supra, whose employment was contingent on "adequate" class enrollment.

Instead of relying on *Cervisi*, which he dismissed as inadequately reasoned, the administrative law judge relied on *Board of Education of Long Beach Unified School District v. California Unemployment Insurance Appeals Board* (1984) 160 Cal App 3d 674 and *Russ v. California Unemployment Insurance Appeals Board*

(1981) 125 Cal App 3d 834. As noted, neither of these cases addressed the question of "reasonable assurance" with respect to community college instructors.

Moreover, both cases are distinguishable. At issue in *Board of Education of Long Beach Unified School District*, was the validity of the Board's conclusion that due to the "tenuous nature of a substitute teacher's employment, including the impermanence, insecurity, and indefiniteness inherent in such employment," *Ibid*, at 681, an "offer" of the possibility of future work, did not provide "reasonable assurance" that there would be any. Unlike the claimant's assignment in this case, the offer in that case did not contain any contingency at all; rather the question before the court was only if there could ever be any reasonable assurance of future substitute teacher employment.

Russ is also distinguishable. In that case the claimant's "reasonable assurance" letter, while explaining that "there would be no work until funds have been approved," also expressly stated that the district expected to rehire the claimant. As a result, the court concluded that the essential message of the letter was a "statement of the District's expectations that the claimant would be reemployed." *Ibid*, at 22. Moreover, the claimant's letter in that case was not couched in the statutory language of an "offer." In this case, the claimant's letter expresses no similar "essential message," and specifically uses the statutory language of an "assignment," which is made "subject to", among other things, minimum class enrollment.

Accordingly, we find *Cervisi* to be the controlling precedent in this case.

DECISION

The decision of the administrative law judge is reversed. The claimant is not disqualified for benefits under code section 1253.3 for the period beginning July 31, 2011.