

Case No.: 2514132

CLT/PET: [REDACTED]

Parties Appearing: Claimant

Parties Appearing by Written Statement: None

Inglewood Office of Appeals

ALJ: Mark Huang

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### ISSUE STATEMENT

The claimant appealed a determination issued August 18, 2008 which held [REDACTED] ineligible for benefits Unemployment Insurance Code section 1253.3 for an indefinite period beginning July 27, 2008. The issue in this case is whether the claimant had reasonable assurance of returning to work in the next school year or term.

### FINDINGS OF FACT

The claimant has worked several years as a non-tenured, part-time faculty member for the employer Santa Monica Community College. [REDACTED] teaches courses during the spring and fall semesters as well as a summer session. [REDACTED] has been terminated following the summer session and then rehired for the fall term. Certain courses are scheduled in advance with [REDACTED] name attached to them. However, the employer has always advised [REDACTED] that [REDACTED] employment is contingent on enrollment of a minimum number of students. [REDACTED] courses, along with any other teacher's courses, may be canceled after the beginning of a semester if enrollment falls below the minimum requirement. Since [REDACTED] is non-tenured, the claimant's courses may be taken over by a tenured full time faculty member if that faculty member's class gets canceled due to low enrollment. Basically, the claimant's employment status is contingent upon not only enrollment in [REDACTED] own classes but also enrollment in classes taught by more senior, tenured faculty members. [REDACTED] was rehired on August 25, 2008.

### REASONS FOR DECISION

Unemployment insurance benefits based on service performed in the employ of a non-profit or public educational institution in an instructional, research or principal administrative capacity are not payable to any individual with respect to any week which begins during the period between two successive academic years or terms if the individual performs services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services for any educational institution in the second of such academic years or terms. (Unemployment Insurance Code, section 1253.3(b).)

In *Russ v. California Unemployment Insurance Appeals Board* (1981) 125 Cal.App.3d 834, the claimant was a teacher's aide who had been employed for

six years. She was terminated at the end of each year and rehired the following year. The school district notified the claimant that it expected to rehire her in the fall. The court held the claimant had reasonable assurance of reemployment in the fall term.

"Reasonable assurance" includes, but is not limited to, an offer of employment or assignment made by an educational institution, provided that the offer or assignment is not contingent on enrollment, funding, or program changes. An individual who has been notified that he or she will be replaced and does not have an offer of employment or assignment to perform services for an educational institution is not considered to have reasonable assurance. (Unemployment Insurance Code, section 1253.3(g).)

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 fact that the claimant is discharged, or laid off, after the end of each summer session and then rehired for the following fall semester is irrelevant. As noted above, if such a pattern is established, it can be found to be reasonable assurance of reemployment, which would disqualify a claimant from receiving unemployment benefits. However, in the present case, the claimant has credibly testified, and has also presented evidence from the chair of the department, that the claimant's ongoing employment is contingent upon enrollment not only in her own scheduled courses but also in other courses for the tenured faculty members of her department. Since her offer of employment is contingent upon enrollment, the claimant did not have reasonable assurance of rehire in the fall semester. It is found that she is eligible for benefits under section 1253.3 beginning July 27, 2008 and ending August 25, 2008, when she returned to employment.

#### DECISION

The determination is reversed. The claimant is eligible for benefits under code section 1253.3 for the week beginning July 27, 2008 and ending August 25, 2008. Benefits are payable provided the claimant is otherwise eligible.

BARSU/mbl/mh