

WORKLOAD NARRATIVE

FIELD OPERATIONS

November 2013

Workload: The bottom fell out of our caseload in November. The number of new cases [24,703 cases] fell by more than 9,000 from the October figures. This was the first time we verified fewer than 25,000 cases since **February 2008**. With the holidays and the commencement of the annual leave work down program, the number of closed cases [25,437] was more than 7,000 below average and represented the smallest output since **November 2008**. This was the third time in four months in which the inventory [29,380] has been reduced, and it is below 30,000 cases for the first time since **June 2006**. The inventory has fallen by almost 17,000 cases [37%] in the past year and by over 54,260 cases [65%] in the past five years.

UI. The number of new UI cases [23,320 cases; 13,316 appellants] was 22% below the average for this year and represented the smallest intake in almost six years. Production [24,375 closed cases; 13,918 appellants] fell for the fourth straight month and represented the fewest decisions in five years. The open inventory [21,288 cases; 12,155 appellants] fell for the 4th time in five months and is now at its lowest level in over seven years.

DI. The number of new DI cases [941] was the lowest it has been in five months. However, dispositions [749] hit a seven month nadir and trailed intake for the first time since July. As a result, the open DI inventory [1,177] jumped back over 1,000. Nevertheless, it remains 6% smaller than average for this year.

Tax, Rulings, Other. It was a quiet month for ruling cases, as intake [127 cases] was 57% smaller than average, and dispositions [151 cases] 52% below the norm. The open balance [3,867] fell for the third straight month and hit a nineteen month low. In tax, new petitions [307] were 20% higher than the average for 2013 and more than double the number of dispositions [151]. This was the fifth time in six months in which the inventory [3,028] has grown larger. However, despite the fact the caseload exceeds 3,000 for the first time since April, it remains smaller than the average for the entire year.

Case Aging and Time Lapse. November was the 10th consecutive month in which the 30-day time lapse percentage [85.5%] exceeded DOL requirements. Moreover, this was the second time in three months in which the 30-day percentage surpassed the 45-day DOL standard. 45-day time lapse was at 96.6%, which was the 20th straight month of meeting that goal. Average case age [21.8 days] was back over 20, but substantially within federal guidelines. Timeliness for extension cases was a mixed bag, and continued to lag substantially behind the performance for UI cases. Time lapse improved impressively with the percentage of cases resolved in 30 and 45 days both rising almost ten percentage points to 31.7% and 60.0% respectively. Meanwhile, the average case age of extensions rose to 36 days.

Cycle Time. The UI cycle time in November [29 days] fell for fourth straight month. The improvement was primarily in the time between the verification of an appeal and the scheduling of a hearing. In DI, the cycle time fell to 53 days, with the most noticeable improvement in the time for verification of appeals.

ALL PROGRAM TRENDS - FO

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	Avg.	% Change	Yr-Yr AvgChg
2010	39,381	36,310	40,820	45,037	39,399	38,140	41,563	43,324	33,493	37,396	31,757	37,369	463,989	38,666		
2011	40,411	36,315	41,141	38,210	38,185	37,903	34,470	40,374	41,888	38,682	32,388	33,369	453,336	37,778	98%	-888
2012	35,262	32,109	38,944	35,539	36,576	34,012	33,820	39,560	35,059	38,330	32,377	27,469	419,057	34,921	92%	-2,857
2013	35,188	32,990	35,462	34,280	35,060	30,208	31,649	31,789	26,509	29,993	24,703		347,831	31,621	91%	-3,300
Multi	7	53	5	26	2	1	31						2012	91%	89%	
													2011	84%	83%	
													2010	82%	82%	
														chg to '13 avg	chg to '13 YTD	

All program registrations Nov to date are down 11% from 2012, down 17% from 2011, and down 18% from 2010
 All program registration monthly average is down 9% from 2012, down 16% from 2011, and down 18% from 2010

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	Avg.	% Change	Yr-Yr AvgChg
2010	34,404	40,009	46,641	42,106	37,589	39,101	37,848	41,243	40,987	39,872	36,622	38,452	474,874	39,573		
2011	35,905	40,146	52,970	37,208	34,144	40,592	35,714	39,116	44,083	36,128	35,054	36,169	467,229	38,936	98%	-637
2012	35,665	39,521	46,692	30,554	36,743	33,437	32,226	37,179	31,752	41,106	34,450	33,674	432,999	36,083	93%	-2,853
2013	34,777	34,753	39,524	30,992	31,139	27,467	37,227	35,005	31,214	29,718	25,437		357,253	32,478	90%	-3,606
Multi			11/46		5/25					15/39			2012	90%	89%	
													2011	83%	83%	
													2010	82%	82%	
														chg to '13 avg	chg to '13 YTD	

All program dispositions Nov to date are down 11% from 2012, down 17% from 2011, and down 18% from 2010
 All program disposition monthly average is down 10% from 2012, down 17% from 2011, and down 18% from 2010

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Avg.	% Change	Yr-Yr AvgChg
2010	88,772	84,920	78,808	81,554	83,171	81,997	85,167	86,889	79,186	76,869	71,857	70,783	80,831		
2011	75,183	71,225	59,203	60,086	64,024	61,203	60,107	61,211	58,886	61,349	58,553	55,653	62,224	77%	-18,608
2012	55,113	47,540	39,388	44,228	43,982	44,458	45,980	48,183	51,402	48,515	46,318	40,048	46,263	74%	-15,961
2013	40,368	38,419	34,291	37,401	41,214	43,875	38,202	34,844	30,062	30,217	29,380		36,207	78%	-10,056
Multi	9	67	4	27	2								2012	78%	77%
													2011	58%	58%
													2010	45%	44%
														chg to '13 avg	chg to '13 YTD

All program open balance Nov to date is down 23% from 2012, down 42% from 2011, and down 56% from 2010
 All program open balance monthly average is down 22% from 2012, down 42% from 2011, and down 55% from 2010

DI TRENDS - FO
Program Codes 7, 10, 11, 12, 16 & 20

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	1,446	1,437	1,775	1,957	1,371	1,232	1,763	1,609	1,366	1,372	1,159	1,414	17,901	1,492		
2011	1,537	1,651	1,411	1,691	1,360	1,428	1,405	1,575	1,489	1,392	1,094	1,268	17,301	1,442	97%	-50
2012	1,395	1,490	1,611	1,256	1,362	1,382	1,206	1,122	1,233	1,069	845	754	14,725	1,227	85%	-215
2013	982	811	995	971	970	884	1,043	991	1,046	1,086	941		10,720	975	79%	-253

DI registrations Nov to date are down 23% from 2012, down 33% from 2011, and down 35% from 2010
DI registration monthly average is down 21% from 2012, down 32% from 2011, and down 35% from 2010

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	1,283	1,557	1,967	1,852	1,276	1,581	1,494	1,511	1,581	1,552	1,372	1,565	18,591	1,549		
2011	1,295	1,576	1,925	1,512	1,441	1,567	1,365	1,462	1,426	1,579	1,266	1,270	17,684	1,474	95%	-76
2012	1,334	1,547	1,456	1,424	1,460	1,140	1,079	1,220	999	1,452	938	1,039	15,088	1,257	85%	-216
2013	1,083	906	1,186	734	758	860	1,026	1,098	1,223	1,298	749		10,921	993	79%	-265

DI dispositions Nov to date are down 22% from 2012, down 33% from 2011, and down 36% from 2010
DI disposition monthly average is down 21% from 2012, down 33% from 2011, and down 36% from 2010

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	2,997	2,876	2,682	2,789	2,891	2,541	2,808	2,908	2,691	2,513	2,299	2,148		2,679		
2011	2,390	2,465	1,951	2,126	2,046	1,905	1,943	2,054	2,117	1,930	1,757	1,755		2,037	76%	-642
2012	1,815	1,757	1,905	1,734	1,636	1,877	2,005	1,906	2,139	1,755	1,663	1,379		1,798	88%	-239
2013	1,277	1,182	991	1,227	1,437	1,462	1,481	1,374	1,198	986	1,177			1,254	70%	-544

DI open balance Nov to date is down 32% from 2012, down 39% from 2011, and down 54% from 2010
DI open balance monthly average down 30% from 2012, down 38% from 2011, and down 53% from 2010

2012	70%	68%
2011	62%	61%
2010	47%	46%
	chg to '13 avg	chg to '13 YTD

TAX TRENDS - FO
Program Codes 15, 17, 18, 32, 45, 46, 47, 48

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	142	139	164	233	140	163	94	137	146	181	188	232	1,959	163		
2011	134	168	144	261	140	180	112	266	364	147	248	402	2,566	214	131%	51
2012	346	141	196	117	78	335	253	229	254	200	215	214	2,578	215	100%	1
2013	223	245	299	199	243	321	233	264	247	242	307		2,823	257	119%	42
													2012	119%	119%	
													2011	120%	130%	
													2010	157%	163%	
														chg to '13 avg	chg to '13 YTD	

Tax registrations Nov to date are up 19% from 2012, up 30% from 2011, and up 63% from 2010
Tax registrations monthly average is up 19% from 2012, up 20% from 2011, and up 57% from 2010

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	48	109	107	91	117	124	135	101	174	130	99	235	1,470	123		
2011	139	173	193	252	176	277	168	278	325	293	323	247	2,844	237	193%	115
2012	227	352	322	492	267	217	236	290	284	357	234	195	3,473	289	122%	52
2013	299	222	475	590	375	301	214	263	352	231	151		3,473	316	109%	26
													2012	109%	106%	
													2011	133%	134%	
													2010	258%	281%	
														chg to '13 avg	chg to '13 YTD	

Tax dispositions Nov to date are up 6% from 2012, up 34% from 2011, and up 181% from 2010
Tax disposition monthly average is up 9% from 2012, up 33% from 2011, and up 158% from 2010

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	4,509	4,539	4,596	4,738	4,759	4,796	4,754	4,790	4,758	4,801	4,890	4,885			
2011	4,880	4,874	4,824	4,833	4,797	4,700	4,643	4,630	4,666	4,520	4,445	4,593			
2012	4,711	4,498	4,371	3,995	3,803	3,918	3,931	3,871	3,841	3,683	3,664	3,683			
2013	3,606	3,629	3,453	3,062	2,930	2,949	2,967	2,965	2,861	2,872	3,028				
													2012	78%	78%
													2011	66%	66%
													2010	66%	66%
														chg to '13 avg	chg to '13 YTD

Tax balance of open cases Nov to date is down 22% from 2012, down 34% from 2011, and down 34% from 2010
Tax balance monthly average is down 22% from 2012, down 34% from 2011, and down 34% from 2010

RULING - OTHER TRENDS - FO
Program Codes 9, 13, 14, 19, 21, 22, 40, 44

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	486	609	709	598	441	424	468	1,359	201	239	229	214	5,977	498		
2011	64	97	92	739	526	510	426	454	207	982	247	251	4,595	383	77%	-115
2012	182	245	746	576	605	424	229	418	209	315	51	108	4,108	342	89%	-41
2013	292	280	201	234	589	585	432	380	219	89	135		3,436	312	91%	-30

Ruling/Other registrations Nov to date are down 14% from 2012, down 21% from 2011, and down 40% from 2010
Ruling/Other registration monthly average is down 9% from 2012, down 18% from 2011, and down 37% from 2010

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	335	392	500	682	465	716	421	631	484	804	303	415	6,148	512		
2011	442	399	728	390	424	631	384	397	530	593	389	351	5,658	472	92%	-41
2012	500	455	299	255	214	165	239	323	170	334	434	171	3,559	297	63%	-175
2013	242	250	424	278	254	248	329	322	574	598	162		3,681	335	113%	38

Ruling/Other dispositions Nov to date are up 9% from 2012, down 31% from 2011, and down 36% from 2010
Ruling/Other disposition monthly average is up 13% from 2012, down 29% from 2011, and down 35% from 2010

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	4,965	5,182	5,394	5,312	5,287	4,996	5,048	5,781	5,494	4,931	4,857	4,658		5,159		
2011	4,281	3,977	3,340	3,692	3,792	3,672	3,716	3,772	3,453	3,842	3,698	3,590		3,735	72%	-1,423
2012	3,272	3,060	3,509	3,825	4,216	4,475	4,466	4,563	4,602	4,582	4,199	4,133		4,075	109%	340
2013	4,182	4,212	3,988	3,943	4,275	4,613	4,716	4,776	4,423	3,914	3,887			4,266	105%	191

Ruling/Other balance of open cases Nov to date is up 5% from 2012, up 14% from 2011, and down 18% from 2010
Ruling/Other balance monthly average is up 5% from 2012, up 14% from 2011, and down 17% from 2010

2012	105%	1059%
2011	114%	1149%
2010	83%	82%
	chg to '13 avg	chg to '13 YTD

ALL PROGRAM TRENDS - FO

NEW OPENED CASES

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2013	35,188	32,990	35,462	34,280	35,060	30,208	31,649	31,789	26,509	29,993	24,703		347,831	31,621	91%	-3,300												
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BALANCE OPEN CASES

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2012	55,113	47,540	39,388	44,228	43,982	44,458	45,980	48,183	51,402	48,515	46,318	40,048		46,263	74%	-15,961												
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FIELD OPERATIONS ~ REPORT SUMMARY

OT/P	2013												Average	OT/P		Appellants		
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		Current Mo. % of Avg.	Total	Current Mo.	Average	Total
WORKLOAD	New Opened Cases																	
	UI TL	8	0	2	2	0	0	2	0	0	0	1	1	1	15	1	1	9
	DI	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Ruling&T-R	11	13	30	103	176	177	236	225	127	15	9	1,122	102	9%	1,122		
	Tax	223	245	294	196	239	314	231	257	243	241	304	2,787	253	120%	2,787		
	Other	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	242	258	326	301	415	491	469	482	370	256	314	3,924	357	88%	3,924		
	Closed Cases																	
	UI TL	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	1
	DI	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Ruling&T-R	111	77	81	98	82	78	56	76	118	115	50	942	86	58%	942		
	Tax	288	219	460	559	307	253	194	237	317	192	119	3,145	286	42%	3,145		
	Other	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	399	296	542	657	389	331	250	313	435	307	169	4,088	372	45%	4,088			
Balance - Open Cases																		
UI TL	9	1	2	2	0	0	2	0	0	0	1	2	2	65%	1	1		
DI	0	0	0	0	0	0	0	0	0	0	0	0	0	#DIV/0!				
Ruling&T-R	2,060	1,996	1,946	1,951	2,044	2,143	2,324	2,473	2,484	2,384	2,343	2,195	2,195	107%				
Tax	2,990	3,016	2,845	2,409	2,308	2,352	2,357	2,338	2,256	2,282	2,462	2,510	2,510	98%				
Other	4	4	4	4	4	4	4	4	4	4	4	4	4	100%				
Total	5,063	5,017	4,797	4,366	4,356	4,499	4,687	4,815	4,744	4,670	4,810	4,711	4,711	102%				
NET PYS USED																		
ALJ	4.78	5.49	4.85	6.00	3.86	4.83	4.39	4.70	4.16	4.39		4.7	4.7	93%				
Non ALJ	18.06	18.09	18.74	17.58	16.62	15.82	7.91	7.86	7.84	7.96		13.6	13.6	58%				
Net Pys	22.84	23.58	23.59	23.58	20.48	20.65	12.30	12.56	12.00	12.35		18.4	18.4	67%				
Ratio 1 /	3.78	3.30	3.86	2.93	4.31	3.28	1.80	1.67	1.88	1.81		2.88	2.88	63%				
PRODUCTIVITY																		
Weekly Dispos per PY	4.2	3.3	5.5	6.6	4.3	4.0	4.6	5.7	9.1	5.4		5.3	5.3	103%				
Weekly Dispos per ALJ	19.9	14.2	26.6	26.1	22.9	17.1	12.9	15.1	26.1	15.2		19.6	19.6	77%				

LOS ANGELES	2013												LA		Appellants			
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Average	Current Mo. % of Avg.	Total	Current Mo. Average	Total	
WORKLOAD																		
New Opened Cases																		
UI TL	3,039	2,977	3,050	3,066	3,058	2,614	2,917	2,968	2,661	2,757	2,228		2,849		31,335	1,272	1,627	17,892
DI	119	95	121	104	101	103	122	66	117	83	120		105		1,151			
Ruling & T-R	20	21	10	12	34	32	14	17	7	5	10		17		182			
Tax	0	0	0	2	0	0	0	1	0	0	0		0		4			
Other	0	3	0	2	0	1	0	2	1	0	1		1		10			
Total	3,178	3,096	3,181	3,186	3,193	2,751	3,053	3,054	2,786	2,845	2,359		2,971		32,682			
Closed Cases																		
UI TL	3,207	2,644	3,720	2,780	2,447	2,608	2,660	3,433	3,072	2,891	2,456		2,902		31,918	1,402	1,657	18,225
DI	130	104	147	82	55	97	86	113	145	155	79		108		1,193			
Ruling & T-R	4	58	6	26	0	2	6	61	2	25	3		18		193			
Tax	1	0	0	12	8	5	1	4	7	1	3		4		42			
Other	0	0	3	0	0	2	0	0	2	0	1		1		8			
Total	3,342	2,806	3,876	2,900	2,510	2,714	2,753	3,611	3,228	3,072	2,542		3,032		33,354			
Balance - Open Cases																		
UI TL	2,664	2,978	2,301	2,574	3,163	3,157	3,411	2,938	2,522	2,383	2,151		2,749			1,228	1,570	
DI	181	172	145	167	213	219	255	208	181	109	150		182					
Ruling & T-R	183	146	149	135	168	199	207	163	40	20	27		131					
Tax	34	34	40	33	23	20	23	22	15	13	10		24					
Other	0	3	0	2	2	1	1	3	2	2	2		2					
Total	3,062	3,333	2,635	2,911	3,569	3,596	3,897	3,334	2,760	2,527	2,340		3,088					
Time Lapse																		
<30 Day TL 60%	73.6	82.9	85.7	88.7	82.1	71.4	79.6	73.2	83.7	78.0	87.5		80.6		109%			
<45 Day TL 80%	94.6	94.9	95.5	98.1	98.2	93.5	91.0	88.4	89.5	95.0	96.7		94.1		103%			
<90 Day TL 95%	98.8	98.6	99.5	99.3	99.4	98.0	98.8	96.8	96.3	99.2	98.8		98.5		100%			
CASE AGE																		
Average Days	21.0	20.0	18.6	19.4	22.3	26.1	27.8	22.2	24.1	20.1	24.9		22		111%			
Average Days UI (median)	17.0	17.0	17.0	18.0	18.0	20.0	21.0	17.0	21.0	16.0	19.0		18		104%			
>90 Days Old %	0.80%	0.41%	0.70%	0.36%	0.32%	0.38%	1.37%	1.25%	0.49%	0.54%	2.07%		0.79%		262%			
# of Cases	14	7	11	6	6	7	30	23	7	9	31		14		226%			
>90 Days Old % DI	4.11%	5.53%	1.15%	2.99%	9.20%	3.47%	7.99%	5.75%	5.03%	1.26%	4.00%		4.59%		87%			
# of Cases	9	12	2	6	24	9	23	15	10	2	7		11		65%			
NET PYS USED																		
ALJ	17.10	17.11	18.51	15.85	12.11	15.76	16.32	16.94	17.28	17.05			16.40		104%			
w/RSU adj	16.22	17.23	19.06	17.78	16.30	16.30	14.94	15.06	14.68	14.49			16.21		89%			
Net Pys	33.32	34.34	37.57	33.63	28.41	32.06	31.26	32.00	31.96	31.54			32.61		97%			
Ratio 1 /	0.95	1.01	1.03	1.12	1.35	1.03	0.92	0.89	0.85	0.85			0.99		86%			
PRODUCTIVITY																		
Weekly Dispos per ALJ (UI&D)	46.5	42.3	49.7	43.0	47.0	42.9	38.2	47.6	46.5	38.8			44.3		88%			
Weekly Dispos per ALJ	46.5	43.2	49.9	43.6	47.1	43.1	38.3	48.4	46.7	39.2			44.6		88%			
Weekly Dispos (non-ALJ)	49.1	42.9	48.4	38.8	35.0	41.6	41.9	54.5	55.0	46.1			45.3		102%			

ORANGE COUNTY												2013												OC					
												Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Average	Current Mo. % of Avg.	Total	Appellants Current Mo. Average	Total	
WORKLOAD																													
New Opened Cases																													
UI TL												2,811	2,655	2,598	2,878	2,996	2,234	2,764	2,474	2,087	2,605	1,996		2,554	78%	28,098	1,140	1,459	16,044
DI												89	57	96	64	83	76	108	104	118	128	85		92	93%	1,008			
Ruling & T-R												19	17	14	9	35	23	16	10	14	7	13		16	81%	177			
Tax												0	0	0	0	0	0	0	0	0	0	0		0	0%	1			
Other												1	2	3	5	1	6	4	2	2	0	0		2	0%	26			
Total												2,920	2,731	2,711	2,956	3,115	2,340	2,892	2,590	2,221	2,740	2,094		2,665	79%	29,310			
Closed Cases																													
UI TL												2,553	2,995	3,361	2,236	2,294	2,449	3,303	2,451	2,374	2,482	2,216		2,610	85%	28,714	1,265	1,491	16,396
DI												125	87	115	46	68	62	110	84	107	166	83		96	87%	1,053			
Ruling & T-R												1	6	23	1	0	11	71	66	14	2	0		18	0%	195			
Tax												0	0	0	0	1	0	0	0	0	1	3		1	550%	6			
Other												6	2	2	1	4	2	7	6	2	0	2		3	65%	34			
Total												2,685	3,090	3,501	2,285	2,367	2,524	3,491	2,607	2,497	2,651	2,304		2,727	84%	30,002			
Balance - Open Cases																													
UI TL												2,771	2,372	1,629	2,244	2,946	2,724	2,184	2,193	1,901	1,989	1,761		2,247	78%		1,006	1,283	
DI												104	74	55	73	88	102	101	121	132	93	95		94	101%				
Ruling & T-R												250	262	254	262	297	309	254	198	198	203	216		246	88%				
Tax												7	7	7	7	12	19	28	36	37	36	33		21	159%				
Other												2	3	2	6	3	8	5	2	2	2	0		3	0%				
Total												3,134	2,718	1,947	2,592	3,346	3,162	2,572	2,550	2,270	2,323	2,105		2,611	81%				
Time Lapse																													
<30 Day TL 60%												62.4	76.6	84.4	93.8	80.8	71.7	78.3	84.8	89.0	81.8	89.4		81.2	110%				
<45 Day TL 80%												85.3	87.8	94.2	99.0	98.6	97.1	93.4	95.4	97.1	97.7	97.7		94.8	103%				
<90 Day TL 95%												95.5	98.8	99.1	100.0	99.9	99.8	99.3	99.9	99.6	99.8	100.0		99.2	101%				
CASE AGE																													
Average Days UI (mean)												24.0	19.0	16.4	18.9	20.9	23.9	18.7	17.8	21.5	16.5	21.2		20	107%				
Average Days UI (median)												20.0	17.0	16.0	19.0	20.0	20.0	15.0	17.0	21.0	15.0	18.0		18	100%				
>90 Days Old % UI												0.23%	0.07%	0.00%	0.07%	0.00%	0.06%	0.00%	0.00%	0.00%	0.00%	0.20%		0.06%	349%				
# of Cases												4	1	0	1	0	1	0	0	0	0	3		1	330%				
>90 Days Old % DI												4.03%	1.77%	0.00%	2.61%	0.71%	0.00%	4.32%	3.61%	3.16%	0.00%	1.55%		1.96%	78%				
# of Cases												5	2	0	3	1	0	6	7	6	0	2		3	69%				
NET PYS USED																													
ALJ												13.91	15.20	15.55	13.05	10.45	13.74	15.19	12.48	13.48	12.93		13.60	95%					
w/RSU adj Non ALJ												16.11	16.16	16.76	14.81	15.05	15.92	15.68	16.28	15.81	15.96		15.85	101%					
Net Pys												30.02	31.36	32.31	27.86	25.50	29.66	30.87	28.76	29.29	28.89		29.45	98%					
Ratio 1 /												1.16	1.06	1.08	1.13	1.44	1.16	1.03	1.30	1.17	1.23		1.17	106%					
PRODUCTIVITY																													
Weekly Dispos per ALJ (UI&DI)												45.8	53.4	53.2	41.6	51.4	45.7	51.1	46.2	46.0	44.5		47.9	93%					
Weekly Dispos per ALJ												46.0	53.5	53.6	41.7	51.5	45.9	52.2	47.5	46.3	44.6		48.3	92%					
Weekly Dispos per ALJ												39.7	50.3	49.7	36.7	35.7	39.6	50.6	36.4	39.5	36.1		41.4	87%					

BASIN	2013												Average	Current Mo. % of Avg.	BASIN Total	Appellants Current Mo. Average	Appellants Total			
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec								
WORKLOAD	New Opened Cases	UI TL	8,903	9,040	8,804	9,320	9,020	7,503	8,463	8,454	6,995	7,914	6,352	8,252	77%	90,768	3,627	4,712	51,829	
		DI	296	255	333	299	282	280	321	288	316	324	281	298	298	94%	3,275			
		Ruling & T-R	142	148	88	61	206	238	110	102	48	26	70	0	113	62%	1,239			
		Tax	0	0	0	2	0	2	0	0	0	0	0	0	0	0%	5			
		Other	2	10	4	7	2	11	4	4	4	4	2	1	5	22%	51			
		Total	9,343	9,453	9,229	9,689	9,510	8,034	8,898	8,849	7,363	8,266	6,704	0	8,667	77%	95,338			
		6	53	4	25	2														
		UI TL	9,124	8,601	10,532	8,217	7,672	7,188	9,072	9,137	8,604	7,966	6,675	8,435	7,459	79%	92,788	3,811	4,817	52,982
		DI	387	264	370	206	205	241	317	356	372	473	235	311	424	75%	3,425			
		Ruling & T-R	81	79	167	108	92	92	171	138	163	217	63	125	1,288	51%	1,371			
Tax	1	2	0	13	9	5	2	4	7	2	6	5	5	129%	51					
Other	7	3	9	3	4	4	9	9	5	4	1	4	5	76%	58					
Total	9,600	8,949	11,078	8,547	7,982	7,530	9,571	9,643	9,151	8,659	6,983	8,881	8,881	79%	97,593					
6	1146			525																
Balance - Open Cases	UI TL	7,922	8,229	6,480	7,516	8,803	9,101	8,489	7,751	6,109	5,997	5,652	7,459	7,459	76%		3,227	4,259		
		DI	386	377	339	432	508	547	562	485	430	280	326	424	77%					
		Ruling & T-R	1,391	1,459	1,379	1,332	1,446	1,593	1,533	1,497	972	777	784	1,288	61%					
		Tax	46	44	50	42	37	41	52	59	53	50	44	47	47	93%				
		Other	3	11	4	8	6	14	9	5	4	5	2	6	6	31%				
		Total	9,748	10,120	8,252	9,330	10,800	11,296	10,635	9,797	7,568	7,109	6,808	9,224	9,224	74%				
		8	67	3	26	2														
		<30 Day TL 60%	60.1	72.1	77.9	81.0	73.7	60.9	63.9	73.7	82.7	78.7	85.2	73.6	73.6	116%				
		<45 Day TL 80%	87.8	91.7	94.6	97.1	96.8	94.0	88.4	88.7	92.2	96.1	96.2	93.1	93.1	103%				
		<90 Day TL 95%	97.3	98.6	99.3	99.5	99.6	98.8	99.1	98.0	97.7	99.3	98.6	98.7	98.7	100%				
CASE AGE	Average Days	UI (mean)	22.3	20.3	18.7	20.3	21.9	25.8	24.7	21.3	23.8	19.1	22.9	22	105%					
		UI (median)	19.0	18.3	17.0	19.0	19.7	21.7	19.7	17.7	21.0	15.7	19.7	19	104%					
		>90 Days Old %	0.75%	0.36%	0.44%	0.25%	0.30%	0.31%	0.80%	1.06%	1.30%	1.14%	0.83%	0.68%	121%					
		# of Cases	14	7	8	4	6	6	17	19	16	16	12	11	11	109%				
		>90 Days Old %	4.30%	3.41%	2.09%	3.84%	3.85%	2.50%	5.71%	5.12%	3.68%	1.35%	3.01%	3.53%	3.53%	85%				
		# of Cases	7	6	4	7	10	6	13	11	7	2	4	7	7	62%				
		NET Pys USED	ALU	47.42	49.99	51.07	46.65	35.16	42.17	45.72	46.02	47.96	44.52	45.67	45.67	97%				
		w/RSU adj	Non ALU	47.85	48.38	50.94	47.47	45.70	46.95	45.71	46.15	44.41	45.36	46.89	46.89	97%				
		Net Pys	95.27	98.37	102.01	94.12	80.86	89.12	91.43	92.17	92.37	89.88	90.93	92.56	92.56	97%				
		Ratio 1 /	1.01	0.97	1.00	1.02	1.30	1.11	1.00	1.00	0.93	1.02		1.03	1.03	99%				
PRODUCTIVITY	Weekly Dispos per ALU	47.8	46.7	50.8	43.0	50.9	44.0	46.7	46.9	46.8	41.2	46.5	46.5	89%						
	Weekly Dispos (non-ALU)	48.2	47.1	51.6	43.6	51.6	44.6	47.6	47.6	47.7	42.3	47.2	47.2	90%						
	Weekly Dispos (non-ALU)	47.8	48.7	51.8	42.9	39.7	40.1	47.6	47.5	51.5	41.5	45.9	45.9	90%						

AO REPORT TO BOARD -- MONTH OF NOVEMBER 2013

	# Cases	# Appellants	Calendar Yr Avg
REGISTRATIONS	1612		2472
DISPOSITIONS	1660		2432
OPEN BALANCE	2562	1463	2336
PENDING REG. (2/1/12)			
APPEAL RATE	5.40%		

CASE AGING 35 MET DOL REQUIREMENT (40 DAYS OR LESS)

TIME LAPSE EXCEEDED DOL STANDARDS IN ALL CATAGORIES

45 Days (50%)	52
75 Days (80%)	93
150 Days (95%)	99

ADDITIONAL INFORMATION

FO to AO Monthly Report 1.2 days
FO ALIs working in AO 1

California Unemployment Insurance Appeals Board
Board Appeal Summary Report
Average Days in Transfer from FO Received Date to Date Received at AO

	November, 2013	October, 2013	September, 2013	August, 2013
	Average Days in Transfer			
	Case Count	Case Count	Case Count	Case Count
Fr	0.54	2.83	0.50	0.54
	70	65	128	123
Ing	1.84	1.88	1.67	2.63
	115	253	268	266
Inl	1.65	1.04	1.45	1.09
	139	257	206	234
LA	1.24	1.98	1.94	0.72
	125	194	256	205
Oak	1.57	1.47	2.00	1.48
	88	120	103	214
OC	0.26	0.21	0.71	0.35
	145	210	150	228
Ox	0.04	0.64	0.49	0.21
	80	81	113	129
Pas	4.25	4.27	5.99	6.53
	53	147	122	198
Sac	1.83	2.50	2.10	2.31
	144	228	345	336
SD	1.09	1.97	2.35	2.04
	88	177	184	285
SF	0.70	3.82	0.86	0.56
	69	76	96	84
SJ	0.92	1.31	0.59	0.32
	86	124	102	102
Tax	0.75	1.21	1.19	1.33
	16	14	31	12
Total	1.26	1.85	1.78	1.80
	1218	1946	2104	2416

California Unemployment Insurance Appeals Board
Board Appeal Summary Report
Average Days in Transfer from Date Received at AO to Board Appeal Event Date

	November, 2013	October, 2013	September, 2013	August, 2013
	Average Days in Transfer			
	Case Count	Case Count	Case Count	Case Count
Fr	2.49	3.20	8.94	6.61
Ing	2.19	2.86	6.33	9.14
Inl	3.17	3.74	6.99	4.80
LA	1.84	3.33	6.82	5.99
Oak	2.43	3.24	5.34	7.14
OC	2.63	2.82	5.60	6.41
Ox	2.21	2.77	8.81	4.02
Pas	2.23	2.17	6.77	4.39
Sac	3.19	3.52	8.80	7.91
SD	2.83	2.76	5.81	6.15
SF	5.42	2.84	7.43	4.92
SJ	2.90	3.30	6.04	4.18
Tax	5.44	2.93	18.35	12.67
Total	2.80	3.09	7.24	6.36
	1218	1946	2104	2416

DI TRENDS-AO
Program Codes 7, 10, 11, 12, 16 & 20

REGISTRATIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	88	67	98	108	87	90	90	85	112	93	106	101	1,125	94		
2011	91	94	135	114	105	112	131	130	124	118	87	108	1,349	112	120%	19
2012	99	82	120	66	74	62	85	92	78	85	65	57	965	80	72%	-32
2013	52	121	55	118	84	46	37	61	74	88	55		791	72	89%	-9
													2012	89%	87%	
													2011	64%	64%	
													2010	77%	77%	

DI registrations Jan to date down 11% from 2012, down 36% from 2011, down 23% from 2010.
DI registration monthly average down 13% from 2012, down 36% from 2011, and down 23% from 2010.

chg to '13 avg	chg to '13 YTD
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DISPOSITIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	92	108	94	78	83	132	67	106	81	87	99	68	1,095	91		
2011	100	128	93	91	95	132	86	100	133	162	118	111	1,349	112	123%	21
2012	113	116	140	88	73	55	79	95	79	87	77	71	1,073	89	80%	-23
2013	69	60	117	88	71	65	53	69	52	44	56		744	68	76%	-22
													2012	76%	74%	
													2011	60%	60%	
													2010	74%	72%	

DI dispositions Jan to date down 24% from 2012, down 40% from 2011, down 26% from 2010.
DI disposition monthly average down 26% from 2012, down 40% from 2011, and down 28% from 2010.

chg to '13 avg	chg to '13 YTD
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BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	End of yr Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	139	98	103	132	136	94	120	99	130	137	144	176	176	126		
2011	167	133	175	198	208	188	234	265	254	210	180	177	177	199	158%	73
2012	163	130	109	87	89	97	102	97	97	95	82	68	68	101	51%	-98
2013	51	110	50	78	91	72	55	49	71	116	115			78	77%	-23
													2012	77%	75%	
													2011	39%	39%	
													2010	62%	64%	

Open Balance of DI Jan to date down 23% from 2012, down 61% from 2011, and down 38% from 2010.
Open Balance monthly average down 25% from 2012, down 61% from 2011, and down 36% from 2010.

chg to '13 avg	chg to '13 YTD
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TAX TRENDS-AO
 Program Codes 15, 17, 18, 32, 45, 46, 47, 48

REGISTRATIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	5	15	15	4	6	12	16	7	16	9	25	15	145	12		
2011	25	18	21	33	32	2	23	23	6	43	25	41	292	24	201%	12
2012	22	20	39	23	34	21	2	13	11	9	44	6	244	20	84%	-4
2013	27	0	0	53	24	17	12	12	5	42	9		201	18	90%	-2
													2012	90%	84%	
													2011	75%	80%	
													2010	151%	155%	
																chg to '13 avg

Tax registrations Jan to date are down 10% from 2012, down 25% from 2011, and up 51% from 2010
 Tax registration monthly average down 16% from 2012, down 20% from 2011, and up 55% from 2010

DISPOSITIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	1	14	20	14	9	19	9	3	11	8	14	5	127	11		
2011	15	34	21	12	34	30	16	31	19	33	19	17	281	23	221%	13
2012	15	23	21	24	17	13	35	34	43	16	2	18	261	22	93%	-2
2013	25	11	15	16	15	10	28	38	18	20	13		209	19	87%	-3
													2012	87%	86%	
													2011	81%	79%	
													2010	180%	171%	
																chg to '13 avg

Tax dispositions Jan to date are down 13% from 2012, down 19% from 2011 and up 80% from 2010
 Tax disposition monthly average down 14% from 2012, down 21% from 2011, and up 71% from 2010

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	57	58	53	44	41	34	41	45	50	51	62	72	72	51		
2011	82	66	66	87	86	59	66	58	45	55	61	85	85	68	134%	17
2012	92	89	108	107	124	132	100	78	46	39	82	70	70	89	131%	21
2013	72	61	46	83	92	97	82	58	48	67	68			70	79%	-19
													2012	79%	78%	
													2011	103%	106%	
													2010	139%	144%	
																chg to '13 YTD

Tax balance of open cases Jan to date is down 21% from 2012, up 3% from 2011, and up 39% from 2010
 Tax balance monthly average down 22% from 2012, up 6% from 2011, and up 44% from 2010

OTHER TRENDS-AO
Program Codes 9,13, 14, 19, 21,22, 40, 44

REGISTRATIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	3	5	98	11	7	14	8	3	16	9	11	5	190	16		
2011	1	4	7	17	16	7	9	10	14	16	6	7	114	10	60%	-6
2012	7	9	13	2	3	0	1	3	3	2	7	2	52	4	46%	-5
2013	2	4	6	9	13	5	11	4	4	14	7		79	7	166%	3
													2011	166%	158%	
													2010	76%	74%	
													2009	45%	43%	

Other registrations Jan to date up 66% from 2012, down 24% from 2011, and down 55% from 2010
Other registration monthly average up 58% from 2012, down 26% from 2011, and down 57% from 2010

DISPOSITIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	2	4	4	96	7	13	9	9	5	10	10	11	180	15		
2011	10	5	5	1	6	20	7	7	13	14	17	10	115	10	64%	-5
2012	9	7	9	9	9	1	1	0	5	3	1	7	61	5	53%	-5
2013	4	3	3	2	15	4	4	7	10	2	9		63	6	113%	1
													2011	113%	117%	
													2010	60%	60%	
													2009	38%	37%	

Other dispositions Jan to date are up 13% from 2012, down 40% from 2011, and down 62% from 2010
Other disposition monthly average up 17% from 2012, down 40% from 2011, and down 63% from 2010

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	End of yr Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	4	5	99	14	14	15	14	8	19	18	19	13	13	20		
2011	4	3	5	21	31	19	20	23	24	26	15	12	12	17	84%	-3
2012	10	12	16	9	3	2	2	5	3	2	8	1	1	6	36%	-11
2013	0	2	2	5	2	11	18	13	7	19	19			9	146%	3
													2011	146%	136%	
													2010	53%	51%	
													2009	44%	43%	

Other balance of open cases Jan to date up 46% from 2012, down 47% from 2011, and down 66% from 2010
Other balance monthly average up 36% from 2012, down 49% from 2011, and down 57% from 2010

ALL PROGRAM TRENDS-AO

REGISTRATIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	2,470	2,136	3,081	2,779	2,362	2,691	2,518	2,957	3,089	2,658	2,796	2,721	32,258	2,688		
2011	2,506	2,625	3,779	3,046	3,318	2,971	3,021	3,267	3,259	3,298	2,341	2,561	35,992	2,999	112%	311
2012	2,789	2,316	3,555	2,608	2,418	1,958	2,407	2,932	2,430	2,728	2,376	2,156	30,673	2,556	85%	-443
2013	2,789	2,721	3,003	3,403	2,735	2,082	2,057	2,055	2,359	2,377	1,612		27,193	2,472	97%	-84
													2012	97%	95%	
													2011	82%	81%	
													2010	92%	92%	

Registrations Jan to date down 3% from 2012, down 18% from 2011, and down 8% from 2010.
 Registration monthly average down 5% from 2012, down 19% from 2011, and down 8% from 2010.

DISPOSITIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	2,210	2,634	2,764	2,707	2,534	2,949	2,352	2,657	2,647	2,853	2,565	2,360	31,232	2,603		
2011	2,601	2,626	2,583	2,546	2,994	3,447	2,361	2,860	4,116	3,804	3,130	3,022	36,090	3,008	116%	405
2012	2,917	3,106	3,407	2,747	2,310	1,816	2,653	3,087	2,709	2,341	2,327	2,608	32,028	2,669	89%	-339
2013	2,921	2,314	3,498	2,810	2,605	1,999	2,258	2,716	2,120	1,853	1,660		26,754	2,432	91%	-237
													2012	91%	91%	
													2011	81%	81%	
													2010	93%	93%	

Dispositions Jan to date down 9% from 2012, down 19% from 2011, and down 7% from 2010.
 Disposition monthly average down 9% from 2012, down 19% from 2011, and down 7% from 2010.

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	3,177	2,668	3,000	3,058	2,886	2,635	2,837	3,135	3,591	3,387	3,626	3,973	3,973	3,164		
2011	3,872	3,870	4,984	5,543	5,814	5,356	6,020	6,423	5,566	5,057	4,265	3,792	3,792	5,047	159%	1,882
2012	3,663	2,902	3,018	2,906	3,014	3,141	2,948	2,758	2,509	2,863	2,894	2,340	2,340	2,913	58%	-2,134
2013	2,057	2,452	1,910	2,509	2,625	2,671	2,484	1,804	2,049	2,575	2,562			2,336	80%	-577
													2012	80%	79%	
													2011	46%	45%	
													2010	74%	76%	

Open Balance Jan to date down 20% from 2012, down 54% from 2011, and down 26% from 2010.
 Open Balance monthly average down 21% from 2012, down 55% from 2011, and down 24% from 2010.

APPELLATE OPERATIONS - REPORT SUMMARY

APPELLATE		July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Average	AO Current Mo. % of Avg.	TOTAL	Appellants Current Mo.
WORKLOAD																	
Registrations																	
UI TL	1,997	1,978	2,276	2,233	1,541									2,005	77%	10,025	
DI	37	61	74	88	55									63	87%	315	
Ruling & T-R	6	3	2	13	6									6	100%	30	
Tax	12	12	5	42	9									16	56%	80	
Other	5	1	2	1	1									2	50%	10	
Total	2,057	2,055	2,359	2,377	1,612									2,092	77%	10,460	?
Multi Cases																	
Dispositions																	
UI TL	2,173	2,602	2,040	1,787	1,582									2,037	76%	10,184	
DI	53	69	52	44	56									55	102%	274	
Ruling & T-R	3	4	9	1	8									5	160%	25	
Tax	28	38	18	20	13									23	56%	117	
Other	1	3	1	1	1									1	71%	7	
Total	2,258	2,716	2,120	1,853	1,660									2,121	78%	10,607	?
Multi Case/CI			1/13														
Balance - Open Cases																	
UI TL	2,329	1,684	1,923	2,373	2,360									2,134	111%		
DI	55	49	71	116	115									81	142%		
Ruling & T-R	13	12	5	17	17									13	133%		
Tax	82	58	48	67	68									65	105%		
Other	5	1	2	2	2									2	83%		
Total	2,484	1,804	2,049	2,575	2,562									2,295	112%		1,463
Multi Cases																	Estimate
FO to AO Appeal Rate																	
UI TL	7.7%	5.5%	6.8%	7.7%	5.6%									6.7%	83.8%		
DI	4.3%	5.9%	6.7%	7.2%	4.2%									5.7%	74.5%		
Ruling & T-R	2.5%	1.0%	0.7%	2.3%	1.0%									1.5%	67.8%		
Tax	4.0%	5.6%	1.9%	11.9%	3.9%									5.5%	71.3%		
Other	41.7%	4.3%	9.1%	5.9%	8.3%									13.9%	60.1%		
Overall Rate	7.5%	5.5%	6.7%	7.6%	5.4%									6.6%	82.7%		

APPELLATE OPERATIONS ~ REPORT SUMMARY

APPELLATE	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Average	AO Current Mo. % of Avg.
TIME LAPSE														
45 Day-50 %	57	77	81	74	52								68	77%
75 Day- 80 %	90	95	96	97	93								94	99%
150 Day- 95 %	100	100	100	100	99								100	100%
CASE AGE														
Avg Days-UI (mean)	30.1	28.4	28.0	31.1	35.0								30.5	115%
Avg Days-UI (median)	26.0	24.0	24.0	27.0	31.0								26.4	117%
Over 120 days old														
UI Cases	11	12	14	13	10								12	83%
UI %	1%	1%	1%	1%	0%								1%	10%
UI % w/out Multi	1%	1%	1%	1%	0%								1%	10%
NET PYs USED														
ALJ	17.31	19.28	18.15										18.2	99%
AO Non ALJ	34.25	33.03	28.85										32.0	90%
CTU Non ALJ	3.35	4.20	3.77										3.8	100%
Net PYs	54.91	56.51	50.77										54.1	94%
RATIOS														
AO w/o transcribers	1.98	1.71	1.59										1.76	91%
AO with transcribers	2.17	1.93	1.80										1.96	92%
TRANSCRIPTS														
PAGES	72	77	48	4									50	8%
AVG PGS Per T/S	4,417	5,278	3,644	241									3,395	7%
	61	69	76	60									67	91%
PRODUCTIVITY														
ALJ Disp/clk	29.6	32.0	30.7										30.8	100%
Trans Pgs/day	59.93	57.12	50.87										56.0	91%

APPELLATE OPERATIONS ~ REPORT SUMMARY

APPELLATE	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Average	AO Current Mo. % of Avg.
TIME LAPSE														
45 Day- 50 %	13	24	53	62	76	72	57	77	81	74	52		58	90%
75 Day- 80 %	83	77	91	92	94	91	90	95	96	97	93		91	103%
150 Day- 95 %	100	100	100	100	100	100	100	100	100	100	99		100	100%
CASE AGE														
Avg Days-UI (mean)	41	35	29.1	30.1	31.0	32.2	30.1	28.4	28.0	31.1	35.0		31.9	110%
Avg Days-UI (median)	40	31	25.0	26.0	24.0	27.0	26.0	24.0	24.0	27.0	31.0		27.7	112%
Over 120 days old														
UI Cases	20	7	1	7	10	16	11	12	14	13	10		11	91%
UI %	1%	0%	0%	0%	0%	1%	1%	1%	1%	1%	1%		1%	109%
UI % w/out Multis	1%	0%	0%	0%	0%	1%	1%	1%	1%	1%	1%		1%	113%
NET PYS USED														
ALJ	21.21	22.75	22.86	21.70	18.79	16.91	17.31	19.28	18.15				19.9	91%
AO Non ALJ	39.92	40.71	40.38	37.88	37.29	35.49	34.25	33.03	28.85				36.4	79%
CTU Non ALJ	3.29	3.34	3.92	4.20	4.31	3.77	3.35	4.20	3.77				3.8	99%
Net Pys	64.42	66.80	67.16	63.78	60.39	56.17	54.91	56.51	50.77				60.1	84%
RATIOS														
AO w/o transcribers	1.88	1.79	1.77	1.75	1.98	2.10	1.98	1.71	1.59				1.83	87%
AO with transcribers	2.04	1.94	1.94	1.94	2.21	2.32	2.17	1.93	1.80				2.02	89%
TRANSCRIPTS														
PAGES	97	50	42	111	134	72	72	77	48	4			71	0%
AVG PGS Per T/S	7.602	3.940	4.633	6.770	7.759	5.145	4.417	5.278	3.644	241			4,943	0%
	78	79	110	61	58	71	61	69	76	60			#DIV/0!	#DIV/0!
PRODUCTIVITY														
ALJ Disp/wk	32.8	25.4	36.4	30.8	31.5	28.1	29.6	32.0	30.7				30.8	100%
Trans Pgs/day	110.03	58.98	56.28	76.76	81.83	64.99	59.93	57.12	50.87				68.5	74%

Case Assignment to the Board for the month of: November 2013

Agenda Item 9

Board Member		1st	2nd	3rd	UI	DI	Ruling	Tax	1 Party	2 Party	Total
Michael Allen											
	Sum	303	604	8	835	58	4	18	382	533	915
	Percent	32%	63%	9%	46%	48%	50%	46%	47%	45%	
Robert Dresser											
	Sum	55	52	76	172	7	1	3	52	131	183
	Percent	6%	5%	89%	9%	6%	13%	8%	6%	11%	
Roy Ashburn											
	Sum	599	300	1	823	56	3	18	372	528	900
	Percent	63%	31%	1%	45%	46%	38%	46%	46%	44%	
Total Cases Reviewed:		957	956	85	1830	121	8	39	806	1192	

*Off Calendar

Monthly Board Meeting Litigation Report - November 2013

AGENDA ITEM 9

<u>LITIGATION CASES PENDING</u>	TOTAL = 359
SUPERIOR COURT: Claimant Petitions.....	291
Employer Petitions.....	36
EDD Petitions.....	3
Non-benefit Court Cases	6
APPELLATE COURT: Claimant Appeals.....	13
Employer Appeals.....	7
EDD Appeals.....	0
Non-benefit Court Cases	1
ISSUES: UI.....	311
DI.....	25
Tax.....	14
Non-benefit Court Cases	9

2013 CALENDAR YEAR ACTIVITY - Benefit & Tax Cases

<u>LITIGATION CASES FILED</u>	<u>YTD</u>	<u>November</u>
SUPERIOR COURT: Claimant Petitions.....	82	4
Employer Petitions.....	13	0
EDD Petitions.....	0	0
APPELLATE COURT: Claimant Appeals.....	5	0
Employer Appeals.....	2	0
EDD Appeals.....	0	0
LITIGATION CASES CLOSED	<u>YTD</u>	<u>November</u>
SUPERIOR COURT: Claimant Petitions.....	52	1
Employer Petitions.....	6	0
EDD Petitions.....	0	0
APPELLATE COURT: Claimant Appeals.....	3	0
Employer Appeals.....	0	0
EDD Appeals.....	0	0

2013 Decision Summary

<u>Claimant Appeals</u>		<u>Employer Appeals</u>		<u>CUIAB Decisions</u>		
Win: 13	Loss: 42	Win: 1	Loss: 5	Affirmed: 47	Reversed: 8	Remanded: 6

November 2013 PERFORMANCE INDICATORS

FIELD OPERATIONS

MEETING DOL STANDARDS UI TIMELAPSE CASES

	<u>Closed</u>	<u>DOL Standard</u>
Closed Cases		
% Closed in <= 30 Days	85.5%	≥60%
% Closed in <= 45 Days	96.6%	≥80%

	<u>Avg. Days</u>	<u>DOL Standard</u>
Pending Cases		
Case Aging	21.8	≤30

	<u>UI</u>	<u>ALL</u>
WORKLOAD		
Opened	23,320	24,703
Closed	24,375	25,437
Balance of Open Cases	21,288	29,380

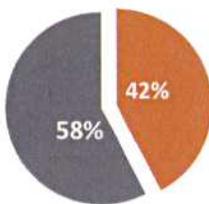
CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

UI Timelapse Appeals	29 days
DI Appeals (including PFL)	53 days
All Programs	35 days

UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	73%
UI Extensions as % of All UI	27%

UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 42% of UI Open Balance, and Regular UI cases made up 58%.

FED-ED UI Extensions made up 0.6% of the FO open balance. These are the extensions that ended in late May 2012. In 2011, they were 3% of the workload.

APPELLATE OPERATIONS

MEETING DOL GUIDELINES & STANDARDS UI TIMELAPSE CASES

	<u>Closed</u>	<u>DOL Guideline</u>
Closed Cases		
% Closed in <= 45 Days	52.3%	≥50%
% Closed in <= 75 Days	93.1%	≥80%

	<u>Avg. Days</u>	<u>DOL Standard</u>
Pending Cases		
Case Aging	35.0	≤40

	<u>UI</u>	<u>ALL</u>
WORKLOAD		
Opened	1,541	1,612
Closed	1,582	1,660
Balance of Open Cases	2,319	2,514

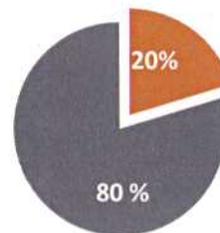
CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

UI Timelapse Appeals	50 days
DI Appeals (including PFL)	51 days
All Programs	51 days

UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	77%
UI Extensions as % of All UI	23%

UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 20% of UI Open Balance, and Regular UI cases made up 80%.

FED-ED UI Extensions made up 0.4% of the AO open balance.

California Unemployment Insurance Appeals Board
FO Cycle Time Summary Report
For Cases Closed in November 2013

UI CASES (timelapse)	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	29	4	5	13	0
Inglewood	30	5	4	12	2
Inland	28	3	3	14	1
Los Angeles	29	3	5	13	2
Oakland	29	4	4	12	2
Orange County	29	3	4	14	1
Oxnard	27	3	4	13	0
Pasadena	27	3	2	12	3
Sacramento	34	5	6	14	2
San Diego	29	3	5	13	2
San Francisco	28	3	6	11	1
San Jose	29	3	6	13	1
Statewide	29	4	4	13	2

ALL CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	36	5	13	13	1
Inglewood	39	5	10	14	3
Inland	35	3	9	14	2
Los Angeles	35	3	10	13	3
Oakland	37	5	11	12	2
Orange County	33	3	6	14	2
Oxnard	31	3	6	13	0
Pasadena	32	3	6	12	3
Sacramento	37	5	6	14	4
San Diego	33	3	8	13	2
San Francisco	42	4	19	11	1
San Jose	32	3	7	13	1
Statewide	35	4	9	13	2

**California Unemployment Insurance Appeals Board
FO Cycle Time Summary Report
For Cases Closed in November 2013**

PFL CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	55	6	27	15	3
Inglewood	53	4	10	16	5
Inland	35	6	19	15	1
Los Angeles	44	5	9	12	8
Oakland	40	7	9	11	5
Orange County	30	4	11	14	0
Oxnard	43	4	12	13	0
Pasadena	33	4	3	10	4
Sacramento	36	8	5	14	8
San Diego	48	5	21	13	1
San Francisco	63	5	31	11	1
San Jose	38	5	12	12	1
Statewide	42	5	13	13	3

DI CASES (no PFL)	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
	Average	Average	Average	Average	Average
Fresno	56	8	31	14	1
Inglewood	45	9	9	13	4
Inland	59	5	14	14	5
Los Angeles	53	10	20	14	5
Oakland	61	8	16	12	4
Orange County	53	11	9	14	5
Oxnard	53	11	15	14	1
Pasadena	48	10	8	13	5
Sacramento	54	9	5	14	6
San Diego	59	9	24	13	4
San Francisco	59	7	23	11	2
San Jose	50	7	11	13	5
Statewide	54	9	14	13	4

CUIAB 13/14 Fiscal Year Overtime/Lump Sum Payout - SCO Report
July 2013 through October 2013

Branch	FY Y-T-D Decision Typing		FY Y-T-D CTU Typing		FY Y-T-D Registration		FY Y-T-D Other	
	Hours	Pay	Hours	Pay	Hours	Pay	Hours	Pay
Appellate	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	108.25	\$3,424.55
Admin	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00
IT	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	630.00	\$28,062.01
Exec	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00
Project	0.00	\$0.00	0.00	\$0.00	4.50	\$214.52	0.00	\$0.00
Field	0.00	\$0.00	0.00	\$0.00	337.25	\$5,171.23	880.50	\$25,743.67
Total	0.00	\$0.00	0.00	\$0.00	341.75	\$5,385.75	1,618.75	\$57,230.23

Branch	13/14 Fiscal Year-to-Date Total Overtime Expenditures				FY 13/14 FY Projections		
	13/14 FY Allocation	Year-to-Date Hours	Year-to-Date Position Equivalent	Year-to-Date Pay	Allocation Balance	Estimated Expenditures Over-/Under	
Appellate	\$90,097.00	108.25	0.05	\$3,424.55	\$86,672.45	\$79,823.35	
Admin	\$5,590.00	0.00	0.00	\$0.00	\$5,590.00	\$5,590.00	
IT	\$97,891.00	630.00	0.30	\$28,062.01	\$69,828.99	\$13,704.97	
Exec	\$0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	
Project	\$1,897.00	4.50	0.00	\$214.52	\$1,682.48	\$1,253.44	
Field Operations	\$213,698.00	1,217.75	0.59	\$30,914.90	\$182,783.10	\$120,953.30	
Total	409,173.00	1,960.50	2.83	\$62,615.98	\$346,557.02	\$221,325.06	
Actual Monthly Average Personnel Year							0.94

13/14 Fiscal Year-to-Date Lump Sum Payout						
July 2013 through October 2013						
Branch	Year-to-Date Hours	Year-to-Date Position Equivalent	Year-to-Date Pay	13/14 Allocation	Estimated Over-/Under	
Appellate	8.00	0.00	\$856.41	\$144,987.00	\$142,417.77	
Admin	658.00	0.32	\$20,592.40	\$5,000.00	-\$15,592.40	
IT	256.00	0.12	\$10,579.45	\$5,000.00	-\$26,738.35	
Exec	48.50	0.02	\$926.46	\$93,867.00	\$91,087.62	
Project	0.00	0.00	\$0.00	\$5,000.00	\$5,000.00	
Field Operations	1,514.00	0.73	\$43,151.99	\$465,441.00	\$335,985.03	
Total	2,484.50	1.19	\$76,106.71	\$719,295.00	\$532,159.67	



2440 West El Camino Real - Suite 620
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FACSIMILE MESSAGE

DATE: December 9, 2013

FILE No.: 05863-0002

To:

FAX No.:

CUIAB Ralph W. Hilton, Chief Counsel	(916) 263-6842
Attorney General's Office Beverley R. Meyers	(415) 703-5480
Weinberg, Roger & Rosenfeld Stewart Weinberg	(510) 337-1023

FROM: John R. Yeh

PHONE No.: 650.327.2672

RE: Consideration of Board Decision A0-337099 EUC for Designation as Precedent Benefit Decision (Alicia K. Brady / Ontario Montclair School District)

NUMBER OF PAGES WITH COVER PAGE: 42 Originals Will Not Follow

DATE SENT: _____ TIME SENT: _____ INITIALS: _____

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Direct No.: 650.327.2672
Our File No.: 05863-0002
jyeh@bwslaw.com

December 9, 2013

VIA FACSIMILE – (916) 263-6842

California Unemployment Insurance Appeals Board
c/o Ralph W. Hilton, Chief Counsel
2400 Venture Oaks Way, Suite 300
Sacramento, CA 95833

Re: San Francisco Unified School District
Unemployment Insurance Appeals Board December 10, 2013 Meeting
Consideration of Board Decision A0-337099 EUC (Alicia K. Brady/Ontario
Montclair School District) for Designation as Precedent Benefit Decision

To the California Unemployment Insurance Appeals Board:

This law firm represents the San Francisco Unified School District ("District"). The District has just received notice of the CUIAB's intent to consider the above-named decision as a Precedent Benefit decision at its December 10, 2013 meeting.

The District has an interest in this matter since it litigates annually before the CUAIB the eligibility of school-term substitute employees for summer benefits under Unemployment Insurance Code section 1253.3. In past years, up to 50-60 District employees have made claims for summer benefits. Moreover, the District is currently involved in litigation over the issue, which is set for hearing before the San Francisco Superior Court this Friday, December 13, 2013. (*United Educators of San Francisco v. California Unemployment Insurance Appeals Board*, San Francisco Superior Court Case No. CPF-12-512437.)

The District objects to the designation of the *Brady* case on the following grounds: 1) the decision misapplies, and is contrary to the statutory intent of Unemployment Insurance Code section 1253.3; and 2) it is inappropriate for the CUIAB to consider designation of the *Brady* case as precedent when the current Superior Court proceedings are in process. In fact, in January of 2013, the CUIAB tabled consideration of the decision in the *Calandrelli* matter (A0-278558) (attached as Exhibit A) because of the pending litigation. If the CUIAB designates the *Brady* case as a Precedent Benefit decision, the District will be forced to protect its interests and amend its complaint in the



California Unemployment Insurance Appeals Board
December 9, 2013
Page 2

existing Superior Court action, and seek a continuance of this Friday's hearing, to challenge such designation.

It is also somewhat troubling that the CUIAB is now considering the designation of the *Brady* case as a Precedent Benefit Decision, when earlier this year, the CUIAB considered the same designation in the *Calandrelli* case, but chose to defer action until the resolution of the pending litigation. The CUIAB reached the following conclusion in the *Calandrelli* case:

- 1) Summer school is not, for the claimant in question, an "academic term" for the purposes of Unemployment Insurance Code section 1253.3 since it "was not a part of the school's traditional academic year" for the claimant (*Calandrelli*, p. 9);
- 2) Precedent Benefit Decisions P-B 412 and 417 do not support a finding of eligibility for summer benefits if a claimant cannot find summer school work; and
- 3) Precedent Benefit Decision P-B 431 establishes that a claimant is only eligible for benefits in the first year after incurring a reduction in work schedule from 12 to 10 months.

However, the *Brady* decision is based on a misapplication of Unemployment Insurance Code section 1253.3, and in fact, on a number of issues, and reaches the opposite conclusion as the Board reached in the *Calandrelli* matter. It is troubling that the CUIAB would consider the *Brady* decision for designation as precedent when it has deferred the consideration of its very different treatment of the issue in the *Calandrelli* matter pending the outcome of the Superior Court lawsuit.

We appreciate that CUIAB has received extensive briefing on this issue from the District over the past years. Rather than repeat the reasons in support of the District's legal contentions here, we are attaching the brief filed by the District in the Superior Court action. (Exhibit B)

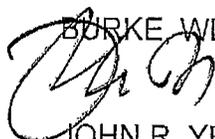
The District believes that the intent of Unemployment Insurance Code section 1253.3 is that school-term employees who have reasonable assurance of returning for the following school year are not eligible for summer benefits since the summer is a recess period, and that the inability to find a summer school position does not by itself make a



California Unemployment Insurance Appeals Board
December 9, 2013
Page 3

claimant eligible for benefits because Precedent Benefit Decisions P-B 412 and 417 require a "loss in customary work" to support a finding of eligibility. We appreciate the CUAIB's willingness to consider the District's position on this issue.

Very truly yours,


BURKE, WILLIAMS & SORENSEN, LLP
JOHN R. YEH

JRY:mks

cc: (Via Facsimile and Electronic Mail)
Beverley R. Meyers
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Counsel for CUIAB
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California Unemployment Insurance Appeals Board
December 9, 2013
Page 4

EXHIBIT A



STATE OF CALIFORNIA - GOVERNOR EDMUND G. BROWN, JR.
LABOR AND WORKFORCE DEVELOPMENT AGENCY

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

Office of the Chief Counsel
2400 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Phone: (916) 263-6806
Fax: (916) 263-6842

January 3, 2013

ARTHUR A. CALANDRELLI
c/o Eric M. Hall
U.E.S.F. AFT/CFT #61
2310 Mason Street
San Francisco, CA 94133

SAN FRANCISCO USD – HR DEPT.
555 Franklin Street, 3rd Floor
San Francisco, CA 94102

EMPLOYMENT DEVELOPMENT DEPARTMENT
Sandra Hughes-Clifton, Chief Counsel
Legal Office, MIC 53
P.O. Box 826880
Sacramento, CA 94280

Re: Appeals Board Case No. AO-278558
Arthur A. Calandrelli, Claimant
San Francisco USD, HR Dept., Employer-Appellant

Attached you will find the agenda for the January meeting of the California Unemployment Insurance Appeals Board. Please note that a case in which you or your client was a party is being considered for designation as a precedent decision. If you have any comments you wish to provide to the Board in this regard, you may do so by appearing at the Board meeting or by submission of written comments on or prior to the date of that meeting.

Please feel free to contact me if you have any questions.

Sincerely,


RALPH W. HILTON
Chief Counsel

Enc.

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JAN 07 2013

Burke, Williams & Sorensen

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD MEETING

Board Room
2400 Venture Oaks Way, Room 400
Sacramento, California

AGENDA

1. The California Unemployment Insurance Appeals Board convenes at 10:30 a.m., Tuesday, January 15, 2013, in Sacramento, California.
2. Roll Call: Robert Dresser, Chair
Kathleen Howard
Roy Ashburn
Michael Allen
3. Approval of Minutes of December 11, 2012 meeting.
4. Chair's Report
5. Board Members' Reports
6. Public Comment
7. Report by Alberto Roldan, Chief ALJ/ Executive Director
8. Report by Lori Kurosaka, Special Assistant to the Board
9. Report by Elise Rose, Chief ALJ, Appellate Operations Branch
10. Report by Rafael Placencia, Chief Information Officer
11. Report by Robert Silva, Chief Administrative Services
12. Chief Counsel's Report, Ralph Hilton
13. Unfinished & New Business
 - Consideration of Board Decision AO-279534(T), Supershuttle International Inc., for designation as precedent
 - Consideration of Board Decision AO-278558, San Francisco Unified School District, for designation as precedent
14. Closed Session:
 - ◆ Pending Litigation; Government Code Section 11126(e)(1)
 - ◆ Personnel Matters; Government Code Section 11126 (a)
 - ◆ Labor Negotiations; Government Code Section 11126 (c) (17)

For Further Information, Contact: Ralph Hilton, Chief Counsel
2400 Venture Oaks Way, Suite 300, Sacramento, California 95833 (916) 263-6806

Individuals requiring special accommodation (American Sign Language interpreter, accessible seating, documentation in accessible formats, etc.) are requested to contact the Chief Counsel's office at (916) 263-6806 at least 7 days prior to the hearing/meeting date.

www.cuiab.ca.gov



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

ARTHUR A CALANDRELLI
c/o ERIC M. HALL
Claimant

Case No.: **AO-278558**

SAN FRANCISCO USD - HR DEPT
c/o JOHN R. YEH, ESQ.
Account No.: 800-3855
Employer-Appellant

OA Decision No.: 3783299
EDD: 0170 BYB: 05/22/2011

DECISION

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

KATHLEEN HOWARD

ALBERTO TORRICO

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.

RECEIVED

DEC 03 2012

Burke, Williams & Sorensen

JOHN R. YEH, ESQ.
BURKE WILLIAMS & SORENSEN LLP
2440 WEST EL CAMINO REAL STE 620
MOUNTAIN VIEW, CA 94040

Date Mailed: Nov 7 2012

Case No.: AO-278558

Claimant: ARTHUR A CALANDRELLI

The employer appealed from the decision of the administrative law judge that held the claimant eligible for unemployment insurance benefits under section 1253.3 of the Unemployment Insurance Code¹ beginning May 29, 2011.

ISSUE STATEMENT

The claimant is a substitute teacher who works at a school with a traditional (not year-round) schedule and who has not worked during the summer recess. The issue in this case is whether the summer session can be considered "the next successive academic term" under code section 1253.3, such that the claimant would be entitled to unemployment benefits over the summer recess.

STATEMENT OF FACTS

The claimant worked for San Francisco Unified School District ("district"), a public educational institution. In this district, the spring semester of the 2010-2011 academic school year ended on May 27, 2011. The summer recess was scheduled between May 28, 2011 and August 14, 2011. The school was not a year-round school, requiring all students to attend year round and teachers and staff to render services year round. The school had a traditional school year, with a fall and spring semester. The district, however, held a summer session for some of the students during the summer recess. The summer session for elementary students was held from June 9, 2011 to July 7, 2011 and for middle and high school students from June 9, 2011 to July 14, 2011. The 2011-2012 academic school year began on August 15, 2011, thus commencing the fall term.

The claimant worked for the district as a day-to-day substitute teacher. In the 2010-2011 academic school year, the claimant's last day of work was on or about May 24, 2011. He stopped work due to the summer recess. For the 2011-2012 academic school year, the claimant returned to work on or about August 21, 2011.

In a letter sent on May 6, 2011, the district informed the claimant that he had reasonable assurance of returning to work in his usual capacity in the 2011-

¹ Unless otherwise indicated, all code references are to California's Unemployment Insurance Code.

2012 school year. The reasonable assurance notice was included as part of a "day-to-day substitute teacher update form" which asked the claimant to provide information about his availability. The claimant completed and dated the form May 14, 2011. On the form, the claimant indicated that he was available for the employer's summer school session in 2011 and for the 2011-2012 school year.

The claimant was not put on the on-call list for summer substitute work and was not offered any work for the summer of 2011. The claimant had never before worked in the summer for this employer. The claimant had only worked during the traditional school year.

The claimant filed a claim for unemployment benefits with a benefit year beginning May 22, 2011. The Employment Development Department (EDD) determined that the claimant was not eligible for benefits under code section 1253.3 beginning May 29, 2011 because the claimant had reasonable assurance of work in the fall semester. Following the hearing on the claimant's appeal of EDD's determination, the administrative law judge determined that the next successive academic term was the summer session and, therefore, the claimant was eligible for benefits under code section 1253.3 because he did not have reasonable assurance for the next successive academic term, i.e., the summer session.

REASONS FOR DECISION

Section 1253.3 controls whether school employees are eligible for unemployment benefits between academic years or terms. As a general rule, benefits will be denied if the employer provides "reasonable assurance" of reemployment in the next of the academic years or terms.

As a substitute teacher, the claimant falls within the provisions of code section 1253.3, subdivision (b), which provides, in pertinent part, that unemployment insurance benefits 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 the academic years or terms and if there is a contract or reasonable assurance that the individual will perform services for any educational institution in the second of the academic years or terms."

(Unemployment Insurance Code, § 1253.3, subd. (b).)

Unemployment Insurance Code section 1253.3 (the statute at issue here) was modeled after the Federal Unemployment Tax Act (FUTA), 26 U.S.C. Section 3304(a)(6). In order for California to qualify for federal funding for this State's unemployment insurance program and for private employers in California to be eligible for federal tax credits for unemployment contributions, California's unemployment compensation laws must comply with the standards set forth in FUTA, codified at 26 U.S.C. §§ 3301-3311.). (See e.g., *Russ v. Unemployment Insurance Appeals Board* (1981) 125 Cal.App.3d 834, 891.) Accordingly, the congressional intent of FUTA provides a basis for determining the California Legislature's intent regarding code section 1253.3.

Section 3304(a)(6)(A)(i) of FUTA states, in pertinent part, the following regarding school employees, such as substitute teachers:

[C]ompensation shall not be payable based on 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 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 1976, Congress declared that those school employees who had "reasonable assurance" of employment in the successive academic year would not be eligible for benefits between academic years. (See Unemployment Compensation Amendments of 1976 (Public Law 94-566).) Congress discussed how to address the summer time period for school employees who work a traditional school year and have a summer recess period. Congress did not intend to provide school employees with paid vacations over the summer, but wanted to provide protections for those school employees who had lost employment. (122 Congressional Record [CR] 33284-85 (1976).) According to Congress, teachers who worked during the 9-month academic year are "really not unemployed during the summer recess" but can choose "to take other employment" during the summer. (122 CR 33285.) The intent of Congress was to "prohibit payment of unemployment benefits during the summer, and other vacation periods, to permanently employed teachers and other professional school employees." (122 CR 35132.)

In 1977, Congress amended 26 USC, Section 3304(a)(6)(A)(i) by adding the reference to "terms." (Emergency Unemployment Compensation Extension Act of 1977 (Public Law 95-19) (substituting "two successive academic years or terms" for "two successive academic years").) In doing so, Congress intended to clarify the "provision of existing law which pertains to the denial of benefits to

teachers during the summer months." (123 CR 8204 (March 21, 1977).) As drafted in 1976, the law required "denial of benefits to teachers during periods between academic years for those teachers . . . who have reasonable assurance that they will be reemployed in the fall." (*Ibid.*) The 1977 amendment was intended to "expand the denial provision to include periods of time between academic terms as well as years in an effort to clarify the intent of the legislation adopted last year." (*Ibid.*) Accordingly, "teachers will not be able to obtain benefits in periods between terms as well as periods between years." (*Ibid.*) With the addition of the reference to "term," the Congress did not intend to limit the application of this provision but intended to expand the coverage of the provision.

Shortly thereafter, the United States Department of Labor², provided the states a memorandum which explained the effect of the amendments under P.L. 95-19:

The amendment made by P.L. 95-19 added to that section that the professional between-terms denial will apply ". . . during the period between two successive academic years or terms. . . ." Thus, any period or term within the institution's academic year which occurs between . . . two regular and successive terms, and during which the individual is not required under his-her contract to perform services would be a period to which the prohibition against the payment of benefits applies.

The period between two regular and successive terms is the short period of weeks between regular semesters or quarters, whether the institution operates on a two or three semester or a four-quarter basis. The suspension of classes during that short period in which services are not required is not a compensable period.

(Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976 - P.L. 94-566, Supplement 3, 1976 Draft Legislation, May 6, 1977.)

Thus, the academic term is a term within the regular academic year.³ For example, if a school district has a regular academic year that is on a trimester

² "The United States Department of Labor is the federal agency responsible for ensuring that state unemployment laws comply with the mandatory federal criteria set out by Congress." (*Dole Hawaii Division-Castle & Cooke, Inc. v. Ramil*, 71 Haw. 419, 426 (Haw. 1990) (internal citations omitted).)

³ In an undated document relied upon by the Administrative Law Judge in the underlying case, the United States Department of Labor, in response to frequently asked questions, offered the following colloquy regarding academic year and term:

"What is an academic year?"

system, the academic terms would be the three trimesters and unemployment benefits would be disallowed between each of the three regular trimesters for a teacher with reasonable assurance for the next trimester. In another example, if the school is a year round school, then the academic terms are terms within the entire year. In addition to disallowing benefits between "academic years," the addition of the word "terms" was added to disallow benefits between the terms within the academic year.

In this case, the claimant was only required to perform services during the traditional academic school year. Because the claimant was not required to perform services during the summer school session and because the summer session is outside of the traditional schedule, it cannot be argued that the summer session became part of the regular academic year for this claimant and was thus a term for this claimant.

In 1978, the California Legislature amended code section 1253.3 to language almost identical to the federal statute. Under code section 1253.3, subdivision (b), unemployment benefits are not payable to professional employees "during the period between two successive academic years or terms" who have reasonable assurance of returning to work in the same or similar capacity "in the second of such academic years or terms." We conclude, therefore, that the California Legislature sought to give effect to Congress' intentions, including its goal of preventing teachers, who historically work the traditional academic year, with reasonable assurance of employment in the fall term, from collecting summer recess benefits.

"Reasonable assurance" includes, but is not limited to, an offer of employment or assignment made by an educational institution, provided that the offer or

An academic year is the period of time characteristic of a school year. It most usually means a fall and spring semester.

What is an academic term?

An academic term is that period of time within an academic year when classes are held.

Examples include semesters and trimesters. Terms can also be other nontraditional periods of time when classes are held, such as summer sessions."

(Conformity Requirements for State UC Laws Educational Employees: The Between and Within Terms Denial Provisions, http://workforcesecurity.doleta.gov/unemploy/pdf/uilaws_termsdenial.pdf). When the Administrative Law Judge cited to this document, he failed to include the definition of "academic year." Without the definition of "academic year," the definition of "academic term" offers little assistance because the academic term is a period within the academic year. Under this definition, an academic term is the period of time within an academic year, which could be a nontraditional academic school year. For example, if the school had a nontraditional academic school year that encompassed a summer term (perhaps a year round school) and employees are required to perform services, then the summer term, being part of that school's academic year, would be an academic term for purposes of code section 1253.3 for those employees.

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 *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 academic year and rehired the following academic 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, and that, "reasonable assurance" is an agreement which contemplates the reemployment of the employee but which is not legally enforceable.

In *Board of Education of Long Beach Unified School District v. California Unemployment Insurance Appeals Board* (1984) 160 Cal.App.3d 674, the claimant worked as a substitute teacher and was offered continuing work as a substitute after a summer recess. The court held the claimant had reasonable assurance of reemployment even though the employer could not specify exactly when or if the claimant would perform services.

If there is a contract or a reasonable assurance that a teacher, who has taught for the District during the prerecess period, will perform teaching services for the employer in the academic year or term during the postrecess period, then the teacher must be denied unemployment benefits during the summer recess regardless of whether he or she is a tenured or nontenured teacher or whether his or her employment is vested or nonvested.

(*Id.* at 683.)

The legislature intended "continuing school employees" such as substitute teachers to be "ineligible for summer recess benefits." (*Id.* at 686.)

The California Unemployment Insurance Appeals Board, in Precedent Benefit Decision P-B-440, found that ineligibility under code section 1253.3, subdivision (b) only applies to work between two successive academic years or terms. In P-B-440, the claimant was laid off from her teaching position at the end of the spring term of the 1982-1983 academic year. She did not work in the fall term of the 1983-1984 academic year. On December 18, 1983, she received an offer to be reinstated to her position and work in the spring term of the 1983-1984 academic term. Because her reasonable assurance was not for the next

successive term, i.e. fall of the 1983-1984 academic year, but was for spring term of the 1983-1984 academic year, she could not be found ineligible due to reasonable assurance under code section 1253.3, subdivision (b). We concluded:

In short, we find that code section 1253.3 is inapplicable to any week for which benefits are claimed, if the week begins other than between two successive terms or academic years. . . .

(P-B-440, p. 4.)

The Appeals Board considered the issue of benefits for school employees during the summer months in Precedent Benefit decisions P-B-412, P-B-417, and P-B-431 following the 1978 "passage of Proposition 13 and the concomitant reduction of funds available to school districts." (P-B-412, p. 3.)

In Precedent Benefit Decisions P-B-412 and P-B-417, the claimants were school employees who worked year round during the school year prior to their application for unemployment benefits. Due to budgetary restrictions, classes were not scheduled during the summer months. In P-B-412 (1980) the Board explained that "[d]uring the summer of 1978, the Employment Development Department and the United States Department of Labor reevaluated the applicability of section 1253.3 to professional and nonprofessional school employees who were scheduled to teach or work during the 1978 summer school session." (P-B-412, p. 3.) The Board found the following:

Review of the congressional debates on Public Law 94-566 and earlier legislation satisfies us that the intent of Congress in enacting such legislation was to deny benefits to those school employees who are normally off work during summer recess or summer vacation periods. However, it was not the intent of Congress to deny benefits to year-round employees or those regularly scheduled for summer work who, due to cancellation of normal or scheduled work, became unemployed.

(*Ibid.* (internal citations omitted)).

Precedent Benefit Decision P-B-417 (1981) relied on the same analysis finding a clerical employee whose year round contract was reduced to ten months, to be eligible for benefits. The Board found that "the cause of her unemployment was not a normal summer recess or vacation period but loss of customary summer work." (P-B-417, p. 3.) It reasoned that "[t]he claimant has always worked during this period and has been forced to cease work due to a mandatory layoff caused by funding problems, unlike actual 'school year' employees (such as tenured

teachers)." (P-B-417, p. 4.) The Board construed the claimant's separation from employment as a layoff. "She is involuntarily unemployed through no fault of her own, and the provisions of Section 1253.3 of the Code do not apply in her case." (*Ibid.*)

In Precedent Benefit Decision P-B-431 (1982), the Board restricted the layoff analysis to those cases involving the year in which the change in employment conditions takes place or the first summer the claimant is affected by the cancellation of regularly scheduled classes. In P-B-431, the claimants were school employees who originally worked a twelve month schedule. One year these school employees were reduced to eleven months of work and the following year they worked only ten months. For each of these years, they received unemployment benefits during the summer recess periods. The claimants were then notified that they again would only work ten months. The appeals board held that unlike the situation in P-B-417, the two month summer break had become a normal recess period for the claimants. As a result, their unemployment insurance benefits were denied, pursuant to the provisions of section 1253.3 of the code.

Here, the claimant historically worked the traditional academic year. In the 2010-2011, the academic school year ended on May 27, 2011, and the 2011-2012 academic school year commenced on August 15, 2011. Accordingly, the academic terms in this case are the terms that fall between the start of academic year, in August, and the end of the academic year, in May. Although the school district had a summer session, the claimant had no summer work experience, no reasonable expectation of working in the summer session, and was not required to work in the summer session. Because the summer session was not a part of the school's traditional academic year and because the claimant had no loss of customary summer work, the summer school session was not a term for this claimant.

In this case, the claimant was a continuing school employee, working as a substitute teacher. He had last worked during the spring term of the 2010-2011 academic year. He had reasonable assurance of work in the fall term of the 2011-2012 academic year, which was the successive academic year. Accordingly, the claimant is ineligible for benefits under code section 1253.3 during the summer break.

DECISION

The decision of the administrative law judge is reversed. The claimant is not eligible for benefits under code section 1253.3 beginning May 29, 2011. Benefits are denied.

FURTHER APPEAL INFORMATION

The Appeals Board's decision is final and can be changed only by action of a judicial court. (Unemp. Ins. Code § 410). The Appeals Board cannot reconsider or set aside the enclosed decision. (37 Ops.Cal.Atty.Gen. 133.)

If you wish to appeal the enclosed decision, you may seek review in Superior Court by filing a **Petition for Writ of Mandate** against the California Unemployment Insurance Appeals Board (Appeals Board) pursuant to section 1094.5 of the Code of Civil Procedure.

The Appeals Board does not process petitions for court review. **You must file such petitions directly with the Superior Court not later than six (6) months after the date of the decision of the Appeals Board. You must also serve a copy of the Petition for Writ of Mandate on the Appeals Board** at its headquarter, 2400 Venture Oaks Way, Suite 100, Sacramento, California 95833. Service of the Petition must comply with legal requirements set forth in the Code of Civil Procedure, sections 414 to 415.95.

The Appeals Board does not pay benefits, handle claims or claim forms, or collect overpayments. If you have questions about these matters, you must contact the Employment Development Department (EDD), not the Appeals Board. It is important that you notify the appropriate EDD office of any change in your address. You may contact EDD at (800) 300-5616 for further information.

If you are a claimant, you are reminded to continue to file weekly claim forms with the EDD while seeking a writ of mandate. If you prevail in court, you will only be paid for those weeks in which you file weekly claim forms and meet other eligibility requirements.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD



SAN FRANCISCO OFFICE OF APPEALS
185 Berry St. Lobby 2, Ste 200
SAN FRANCISCO CA 94107

(415) 357-3801

ARTHUR A CALANDRELLI
c/o ERIC M. HALL
Claimant-Appellant

SAN FRANCISCO USD - HR DEPT
c/o JOHN R. YEH, ESQ.
Account No: 800-3855
Employer

Case No. 3783299

Issue(s): 1253.3

Date Appeal Filed: 06/22/2011

EDD: 0170 BYB: 05/22/2011

Date and Place of Hearing(s):
(1) 10/26/2011 San Francisco

Parties Appearing:
Claimant, Employer

DECISION

The decision in the above-captioned case appears on the following page(s).

The decision is final unless appealed within 20 calendar days from the date of mailing shown below. See the attached "Notice to Parties" for further information on how to file an appeal. If you are entitled to benefits and have a question regarding the payment of benefits, call EDD at 1-800-300-5616.

Eric Wildgrube Administrative Law Judge

FILE COPY

Date Mailed: **NOV 16 2011**

Case No.: 3783299

San Francisco Office of Appeals

CLT/PET: Arthur A. Calandrelli

ALJ: Eric Wildgrube

Parties Appearing: Claimant, Employer

Parties Appearing by Written Statement: None

ISSUE STATEMENT

The claimant appealed from a determination that held the claimant ineligible for benefits under Unemployment Insurance Code section 1253.3 beginning May 29, 2011. The issue in this case is whether the claimant is a school employee who is ineligible for benefits between terms, or during an established and customary vacation or recess period.

FINDINGS OF FACT

The claimant is employed as a Day to Day Substitute Teacher for the San Francisco Unified School District.

The last day of instruction for the San Francisco Unified School District during the Spring 2011 Term was May 27, 2011. The District then held a Summer Term for elementary school students beginning June 9, 2011 and ending July 7, 2011 and for middle school and high school students beginning June 9, 2011 and ending July 14, 2011. The first day of instruction for the Fall 2011 Term was August 15, 2011.

On May 6, 2011, the district mailed the claimant a letter stating he had a reasonable assurance of returning to work for the 2011-2012 school year (beginning with the Fall Term) as an on-call substitute. The claimant returned a survey stating he was available for work during Summer 2011 and for the 2011-2012 school year.

The claimant last worked during the Spring Term on or about May 24, 2011. He resumed working on August 21, 2011.

The claimant was available for work during the Summer Term of 2011 but he was not called for work during that term. He had not been called for work during the Summer Term of 2010.

REASONS FOR DECISION

Unemployment insurance was established to provide "benefits for persons unemployed through no fault of their own, and to reduce involuntary

unemployment and the suffering caused thereby to a minimum." (Unemployment Insurance Code section 100.) It was "designed to cushion the impact of seasonal [and] cyclical ... idleness." (*Chrysler Corp. v. California Employ. Stabilization Comm.* (1953) 116 Cal.App.2d 8, 16.

"The provisions of the Unemployment Insurance Code must be liberally construed to further the legislative objection of reducing the hardship of unemployment." [Citations omitted.] *Gibson v. Unemployment Ins. Appeals Bd.* (1973) 9 Cal.3d 494, 499. Exceptions however, "to the general provisions of a statute are to be narrowly construed". *Corbett v. Hayward Dodge* (2004) 119 Cal.App.4th 915, 921.

Unemployment Insurance Code section 1253.3 (the statute at issue here) was modeled on a federal statute, a provision of the Federal Unemployment Tax Act (FUTA) of 1976 (Stats. 1978, ch. 2, section 109; Stat. 2667, 2670-2671); therefore, Congressional intent is relevant to construing the section. The intent of Congress in enacting the corresponding provision of FUTA was to prevent overcompensation of teachers who are paid a reasonable annual salary based on work performed over nine months of the year. (See, 122 Congressional Record [CR] 33284-33285 and 35132 (1976).) The debate in Congress confirms it was Congress' intent to prohibit payment of unemployment benefits to salaried personnel during "vacation" or "recess" periods. (122 CR 22899 and 35136 (1976).)

Unemployment Insurance Code, section 1253.3(b) provides, 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.

The United States Department of Labor defines an "academic term" to be,

that period of time within an academic year when classes are held. Examples include semesters and trimesters. Terms can also be other nontraditional periods of time when classes are held, such as summer sessions.

Conformity Requirements for State UC Laws Educational Employees: The Between and Within Terms Denial Provisions
(http://workforcsecurity.doleta.gov/unemploy/pdf/uilaws_termsdenial.pdf).

During 2011 the San Francisco Unified School District provided instruction during a Spring Term which ended May 27, 2011. The next period of time when classes were held was the Summer Term. Instruction resumed during the Summer Term on June 9, 2011.

The claimant worked during the Spring Term. He was provided a reasonable assurance that he would perform services for the San Francisco Unified School District during the Fall Term. The successive academic term following the Spring Term, however, was the Summer Term. The claimant was not provided a reasonable assurance of employment during the Summer Term. He had a reasonable expectation of work during that term.

The eligibility for unemployment benefits of teachers and other school district employees who are not paid during the summer unless they actually work is consistent with construing 1253.3 narrowly and follows Congressional intent and the purposes of unemployment insurance. It will not result in the type of double compensation Congress sought to avoid. Therefore, the claimant is eligible for benefits under section 1253.3.

DECISION

The determination of the department is reversed. The claimant is eligible for unemployment benefits under section 1253.3.

SFOA:ew

Case No. AO-278558

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**ENDORSED
 FILED**
 Superior Court of California
 County of San Francisco

NOV 08 2013

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 6 and Cross-Complainant
 7 SAN FRANCISCO UNIFIED SCHOOL DISTRICT

CLERK OF THE COURT
 BY: ~~WESLEY RAMIREZ~~
 Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF SAN FRANCISCO

10

11 UNITED EDUCATORS OF
 12 SAN FRANCISCO APT/CFT, AFL-CIO,
 NEA/CTA,

Case No. CPF-12-512437

Petitioner,

SAN FRANCISCO UNIFIED SCHOOL
 DISTRICT'S CONSOLIDATED
 OPPOSITION TO UNITED EDUCATORS
 OF SAN FRANCISCO'S PETITION FOR
 WRIT OF MANDATE AND
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF CROSS-
 COMPLAINT FOR DECLARATORY
 RELIEF

v.

15 CALIFORNIA UNEMPLOYMENT
 16 INSURANCE APPEALS BOARD,

Respondent,

17 SAN FRANCISCO UNIFIED SCHOOL
 18 DISTRICT,

Real Party In Interest.

Petition Filed: August 27, 2012
 Hearing Date: December 13, 2013
 Time: 9:30 a.m.
 Dept: Hon. Marla J. Miller

20

~~SAN FRANCISCO UNIFIED SCHOOL~~
 21 ~~DISTRICT,~~

Cross-Complainant,

v.

24 CALIFORNIA UNEMPLOYMENT
 25 INSURANCE APPEALS BOARD; and
 26 UNITED EDUCATORS OF SAN
 FRANCISCO APT/CFT, AFL-CIO,
 NEA/CTA,

Cross-Defendants.

28

EXED

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MP #4811-0920-2454 v1

- 1 -

SPUSD'S OPPOSITION TO PETITION FOR WRIT OF MANDATE

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1 SAN FRANCISCO UNIFIED SCHOOL DISTRICT ("DISTRICT") submits the
2 following brief in support of its opposition to the Petition for Writ of Mandate of the UNITED
3 EDUCATORS OF SAN FRANCISCO AFT/CFT, AFL-CIO, NEA/CTA ("UESF"), and in
4 support of the DISTRICT'S Cross-Complaint against the CALIFORNIA UNEMPLOYMENT
5 INSURANCE APPEALS BOARD ("CUIAB") and UESF.

6 **I. INTRODUCTION**

7 The issue raised in this matter is simple: whether school-term employees (i.e., those
8 employed during the traditional school year between August and June) should receive
9 unemployment benefits if they are unable to find work during the DISTRICT's separate summer
10 school session. "Plainly and simply stated, teachers between academic terms or semesters are not
11 unemployed. They are on vacation." (*Board of Education v. Unemployment Ins. Appeals Bd.*
12 (1984) 160 Cal.App.3d 674, 688 [Citation Omitted].) To base a school-term employee's
13 eligibility for summer benefits only on the fact that they are unable to find a position during the
14 summer school term violates the statutory intent that benefits be available only to those who
15 suffer a loss in customary work.

16 **II. FACTUAL BACKGROUND**

17 This matter involves school-term employees employed during the DISTRICT's 2010-
18 2011 school year. The last day of the 2010-2011 school year was May 27, 2011. The District
19 maintained a summer school session from June 9, 2011 through July 7, 2011 for elementary
20 school students (and through July 14, 2011 for middle and high school students.) The first day of
21 instruction for the following school year, the 2011-2012 school year, was August 15, 2011. All
22 of the claimants herein received reasonable assurance notices of returning to work (*See*,
23 "Stipulated Facts, ¶¶ 2-3; 7), and did in fact return, for the 2011-2012 school year.

24 In 2011, the DISTRICT's summer school session had been reduced to only offer
25 instruction in special education and credit-recovery programs for high-school students, and the
26 number of positions outside those specialties dramatically fell from previous years. (AR, P2160-
27 2161; 3130-3131.)

1 **III. LEGAL ARGUMENT**

2 **A. Pertinent Sections of the California Unemployment Insurance Code.**

3 Unemployment Insurance Code § 1253.3, subsection (b), governs instructional personnel:

4 [B]enefits ... are not payable to any individual with respect to any week which
5 begins during the period between two successive academic years or terms or, when
6 an agreement provides instead for a similar period between two regular but not
7 successive terms, during that period, or during a period of paid sabbatical leave
8 provided for in the individual's contract, if the individual performs services in the
9 first of the academic years or terms and if there is a contract or a reasonable
10 assurance that the individual will perform services for any educational institution
11 in the second of the academic years or terms...

12 Unemployment Insurance Code § 1253.3, subsection (c), applies to those employees not
13 serving in a "instructional, research, or principal administrative capacity":

14 Benefits specified by subdivision (a) based on service performed in the employ of
15 a nonprofit organization, or of any entity as defined by Section 605, with respect to
16 service in any other capacity than specified in subdivision (b) for an educational
17 institution shall not be payable to any individual with respect to any week which
18 commences during a period between two successive academic years or terms if the
19 individual performs the service in the first of the academic years or terms and there
20 is a reasonable assurance that the individual will perform the service in the second
21 of the academic years or terms.

22 Arguments based on the tenuous and impermanent nature of substitute school-term employment
23 have been considered and rejected by the California Court of Appeal in *Board of Education v.*
24 *Unemployment Ins. Appeals Bd.* (1984) 160 Cal.App.3d 674. In rejecting the CUIAB's argument,
25 the Court of Appeal stated as follows:

26 The superior court concluded that the Board's reliance on the tenuous
27 impermanent nature of substitute teacher Smith's employment, e.g., that he
28 'acquired no vested or protected right to continuous employment' and that he 'was
not subject to termination since his job ended at the conclusion of each school
day,' are irrelevant to the 'reasonable assurance' issue within the meaning of
section 1253.3. We agree. [¶] Consideration of such tenuous aspects are extrinsic
to clear legislative language and sources and therefore cannot be a basis for
resolving the 'reasonable assurance' issue [citation omitted]. (*Id.* At 682.)

29 The court also stated that "[t]here is nothing in § 1253.3 which sets as a criteria the tenuous nature
30 of a substitute teacher's position as a basis for determining the 'reasonable assurance' issue." (*Id.*
31 at 683.) The Court of Appeal further concluded that the restrictions on the receipt of summer

1 unemployment insurance benefits by school-term employees applied regardless of whether or not
2 the employee in question had a vested right in his or her employment;

3 The exclusion of benefits under section 1253.3 applies to instructional educational
4 employees regardless of whether their employment status is vested or nonvested.
5 If there is a contract or a reasonable assurance that a teacher, who has taught for
6 the District during the prerecess period, will perform teaching services for the
7 employer in the academic year or term during the postrecess period, then the
8 teacher must be denied unemployment benefits during the summer recess
9 regardless of whether he or she is a tenured or nontenured teacher or whether his
10 or her employment is vested or non-vested. (Id. at 682-683.)

11 In *Russ v. California Unemployment Appeals Board* (1982) 125 Cal.App.3d 834, a
12 California Court of Appeal held that a teacher's aide was ineligible for summer unemployment
13 insurance benefits. The *Russ* court concluded that an employee did not need to have a contractual
14 right to return to work to have "reasonable assurance" for the purposes of Unemployment
15 Insurance Code § 1253.3.

16 The intent of these statutes is clear: school-term employees with reasonable assurance of
17 returning to work during the next academic year or term are not eligible for benefits. There is no
18 statutory evidence that the inability to find work during the DISTRICT's summer school session
19 overrides this rule.

20 Petitioner contends that the DISTRICT's summer school session must be considered an
21 "academic term" for all purposes under Unemployment Insurance Code § 1253.3(c), and that any
22 school district offering a summer session cannot invoke that statute as a basis for ineligibility. As
23 will be shown below, the operative statute -- whose intent was to establish the ineligibility of
24 school-term employees during their recess periods -- does not support this contention. Petitioner's
25 interpretation ignores the definition of "academic term" as established by California law, and also
26 violates the at-will and voluntary nature of summer school employment. Since school-term
27 employment with the DISTRICT does not automatically vest rights in the much smaller summer
28 school program, it makes no sense to treat the DISTRICT's summer session as an "academic
29 term" conferring the same rights of eligibility as employment during the DISTRICT's regular
30 school year.

1 **B. Legislative History**

2 1. **The Federal Statute was Based on the Traditional School Year**
 3 **Commencing in the Fall, and a Summer Recess Period.**

4 Unemployment Insurance Code § 1253.3 is based upon the Federal Unemployment Tax
 5 Act. (26 U.S.C.A. §§ 3301-3331.) In fact, the State's funding is contingent upon compliance with
 6 the federal statute:

7 California's unemployment compensation program ... is approved by the
 8 Secretary of Labor upon review for conformity with qualifying criteria established
 9 in the federal Act. [Citation Omitted.] State programs thus approved by the
 10 Secretary of Labor are subsidized with federal grants paid to the conforming states
 11 pursuant to the Social Security Act. [Citation Omitted.] The California Legislature
 12 has qualified the employers of this state for the tax credits, and its program for the
 13 subsidies, by adopting and maintaining an unemployment compensation law which
 14 closely conforms to the criteria established in the federal Act. (*Russ v.*
 15 *Unemployment Ins. Appeals Bd.* (1981) 125 Cal.App.3d 834, 842.)

16 Therefore, the legislative intent behind the federal statute is relevant to interpreting
 17 California's statute. The legislative intent behind the federal statute was to establish that school-
 18 term employees were not eligible for benefits during the summer recess, if that employee has
 19 reasonable assurance of "reemployment *in the fall*":

20 [The federal statute] was thus amended to provide in effect that public school
 21 employees might be eligible for benefits 'except' in certain instances involving
 22 their unemployment during periods of summer recess at the employing schools.
 23 Subparagraph (i) of the amended subsection requires in effect that a conforming
 24 state must deny eligibility for summertime benefits to a professional school
 25 employee (such as a teacher), at any grade level, if there is "a contract" providing
 26 for his or her *reemployment in the fall* or "reasonable assurance" of such
 27 reemployment. Subparagraph (ii) of the amended subsection provides in effect that
 28 a conforming state may deny eligibility for summertime benefits to a
 29 nonprofessional school employee at a subcollegiate grade level (such as appellant)
 30 if there is "reasonable assurance" (only) of his or her reemployment in the fall.
 31 (*Id.* at 843.) [Footnote Omitted.] (Emphasis Provided.)

32 The legislative history behind the federal statute is clear that school-term employees were
 33 not intended to be eligible for unemployment benefits during the summer, as shown by the
 34 following excerpts from the Congressional Record¹:

- 35 • "The bill prohibits payment of unemployment compensation benefits during
 36 the summer, and other vacation periods, to permanently employed teachers

37 ¹ The Congressional Record also reflects that the statute was premised upon the assumption that a school-term
 38 teacher's salary was based upon a calendar year. (*Id.* at 33285.)

1 and other professional school employees. It allows States to deny benefits
2 during vacation periods to employed nonprofessional schoolworkers.”
(Congressional Record, Vol. 122, Part 27, 35132 (San Francisco Unified
3 School District’s Request Judicial Notice (“RJN”), Exh. A).)

- 4 • “The conference bill also prohibits payment of SUA benefits during recess
5 periods to nonprofessional school employees with reasonable assurance of
6 returning to their previous jobs at the end of the recess period. A similar
7 provision pertaining to professional school employees – teachers, researchers,
8 and administrators – is contained in present law.” (*Id.*)

9 It is clear, then, that the legislative intent behind the statute was to recognize one
10 traditional school year, with a traditional recess during the summer, and with employees returning
11 in the fall.

12 **2. The Federal Statute Only Contemplated Retroactive Eligibility Over**
13 **the Summer if an Employee Lost His/Her Job.**

14 The congressional record also recognized that the statute allowed for a school-term
15 employee receiving reasonable assurance to become *retroactively* eligible for benefits should they
16 in fact lose their assignment for the following year:

17 If, at the end of that vacation period, [an employee] actually finds that he had no
18 reasonable assurance of employment by the school agency, and indeed, is not
19 employed then *retroactively*, he may have his benefits redetermined. He does not
20 get them until that determination is made. (Congressional Record, Vol. 122, Part
21 26, 33285 (RJN, Exh. B).)

22 The legislative history shows the intent that an employee who loses the right to return
23 during the following school year is considered “legitimately unemployed.” (*Id.*) This rule was
24 incorporated into California’s unemployment statutes in Unemployment Insurance Code
25 § 1253.3(i)(4)². Therefore, there is no basis for finding eligibility during the summer school term
26 based only on the *inability* to find a summer school job. Under Unemployment Insurance Code
27 § 1253.3(i)(4), an employee can only be retroactively eligible for the summer period if he/she
28 *loses* his/her job and does not return in the following fall. This interpretation is consistent with

29 ² “If it is stated that the individual has reasonable assurance of reemployment, that the individual shall be entitled to
30 a retroactive payment of benefits if the individual is not offered an opportunity to perform the services for the
educational institution for the second of the academic years or terms, if the individual is otherwise eligible and he or
she filed a claim for each week benefits are claimed, and if a claim for retroactive benefits is made no later than
30 days following the commencement of the second academic year or term.”

1 the intent of unemployment insurance: to compensate employees who lose employment that they
2 once held – not to compensate them for not being able to find employment that they never held.

3 **C. Application to SFUSD School-Term Employees.**

4 **1. Education Code § 37200 Creates Only One “School Year”:**

5 The California Education Code demonstrates a strong statutory intent to distinguish the
6 mandatory regular school year from the permissive summer school term. Education Code
7 §§ 37618 through 37620 provide as follows:

8 *§ 37618. School calendar; rotating shifts*

9 The governing board of any school district operating pursuant to the provisions of
10 this chapter shall establish a school calendar whereby the teaching sessions and
11 vacation period during the school year are on a rotating basis.

12 *§ 37619. Holidays*

13 Each selected school shall be closed for all students and employees on regular
14 school holidays specified in Article 3 (commencing with Section 37220) of
15 Chapter 2.

16 *§ 37620. Sessions and vacations*

17 The teaching sessions and vacation periods established pursuant to Section 37618
18 shall be established without reference to the school year as defined in Section
19 37200. *The schools and classes shall be conducted for a total of no fewer than 175
20 days during the academic year. (Emphasis Provided)*

21 Education Code § 37620 clearly identifies the “academic year” as that occurring during
22 the regular school year of no less than 175 days.

23 By contrast, summer sessions were never intended to be part of the school year. In
24 *California Teachers Association v. Board of Education of Glendale* (1980) 109 Cal.App.3d 738,
25 the court of appeal, in affirming the lower court’s rejection of a teacher union’s challenge to the
26 District’s contract with a university to provide summer school services, stated:

27 “...[T]he governing body of a district may establish and maintain such summer
28 schools. No mandatory requirement of summer school is found in any of these
sections, and it must therefore be concluded that the establishment and
maintenance of summer school classes and programs is only permissive rather than
mandatory.” (*Id.* at 744-45.) (Emphasis added.)

Likewise, in the context of employee rights, the Education Code recognizes that it would
be unfair to treat employment during the summer school session in accordance with the same

1 rights as employment during the regular school year. Education Code § 44913 provides as
2 follows:

3 § 44913. *Summer school employment in computation for classification as*
4 *permanent employee*

5 Nothing in Sections 44882 to 44887, inclusive, Sections 44890, 44891, Sections
6 44893 to 44906, inclusive, and Sections 44908 to 44919, inclusive, shall be
7 construed as permitting a certificated employee to acquire permanent classification
8 with respect to employment in a summer school maintained by a school district,
9 and service in connection with any such employment shall not be included in
10 computing the service required as a prerequisite to attainment of, or eligibility to,
11 classification as a permanent employee of the district. The provisions of this
12 section do not constitute a change in, but are declaratory of, the preexisting law.

13 Likewise, there is no statutory right to summer school employment that flows from
14 employment during the regular school year. While school-term employees generally have the
15 right to return the following school year unless released under a temporary or short-term contract
16 (Education Code §§ 44954, 45103(d)(2)); laid off (44949, 45117); or dismissed for cause (44932
17 *et seq.*, 45113), there is no guarantee of summer employment from year to year.

18 **2. Education Code: Substitute Employees**

19 The California Education Code recognizes and defines substitute employees at § 44917 as
20 follows:

21 Except as provided in Sections 44888 [repealed] and 44920 [not applicable],
22 governing boards of school districts shall classify as substitute employees those
23 persons employed in positions requiring certification qualifications, to fill
24 positions of regularly employed persons absent from service.

25 Thus, the primary function of a substitute teacher is to fill the position of a regularly
26 employed person who is absent from service. Substitute employees are neither probationary nor
27 permanent. (Education Code § 44915.) Therefore, they do not hold tenure or have any vested
28 rights in continued employment. (*See, e.g., Wood v. Los Angeles City School District* (1935) 6
Cal.App.2d 400.)

29 **3. There Is No Basis under State Law for Treating Summer School as an**
30 **"Academic Term" for the Purposes of Overriding the Legislative**
31 **Intent of Unemployment Insurance Code § 1253.3**

32 As has been shown above, the federal legislation was modeled upon a premise that a
33 school district had a single school year, beginning in the fall, and ending in the spring, with a

1 traditional summer recess. State law parallels this model, establishing as an “academic year” that
2 occurring during the regular school year of no less than 175 days. (Education Code §§ 37620,
3 44908.) School-term employment is based upon a recurring right to return for the following
4 “academic year” for both certificated (i.e., credentialed) and classified employees (Education
5 Code §§ 44954, 45103(d)(2), 44949, 45117, 44932 *et seq.*, and 45113.) Employment during the
6 academic year does not vest an employee with the right to employment during the summer term,
7 as evidenced by the fact that many claimants here could not find employment during the
8 DISTRICT’s summer school session.

9 Treating the summer session as an “academic term” for the purposes of Unemployment
10 Insurance Code § 1253.3 violates the intent behind that statute in a number of ways. First, the
11 intent of the State law, and the federal law on which it was modeled, was to determine eligibility
12 of school-term employees with a reasonable assurance of returning to their school-term positions
13 when the regular school year started. It would be incongruous to require school districts to
14 provide two reasonable assurance notices – one in the spring applying to employment for the
15 summer term, and a second in the summer applying to employment in the fall – in order to
16 establish ineligibility during recess periods.

17 The problem with treating the summer school session as an “academic term” was aptly
18 explained in Administrative Law Judge Peter Wercisnki’s December 13, 2005 ruling³, which was
19 subsequently modified by the UAB. This erroneous interpretation would arguably result in the
20 school year having three “academic terms,” with two summer recess periods with variable
21 eligibility for both.

22 However, application of the other language of section 1253.3(b) to a summer
23 school session reflects a different legislative intent. As set forth above, benefits
24 are not payable under section 1253.3(b) if there is reasonable assurance of work in
25 the ‘second’ academic terms. If a summer school session is an academic term, the
26 summer school session is the second academic term to determine eligibility in the
27 first summer recess period, and the fall term is the second academic term to
28 determine eligibility in the second summer recess period. Thus, a claimant would
not be ineligible for benefits during the first summer recess period but would be
ineligible for benefits during the second summer recess period if there is no
reasonable assurance of work in the summer session but there is reasonable
assurance for the fall term. Nothing in the statute or decision interpreting it

³ Claimant Linda Weil, SFUAB Case No. 1665527; CUAIB Case No. AO-127365.

1 suggest that different results should occur for the two summer recess periods or
2 that separate findings of reasonable assurance for the summer school session and
3 the fall term are required to determine whether section 1253.5(b) applies to the two
4 summer recess periods ... (DISTRICT's Request for Judicial Notice ("RJN"),
5 Exh. C, pp. 7-8.)

6 There is no indication in either the State or federal statutes of the intent to require
7 educational institutions to send multiple reasonable assurance notices applying to terms with
8 differing rights of employment. School-term employees finishing the traditional school year
9 "return" to their customary positions in the fall. There is no indication that the statute
10 contemplated that the reasonable assurance notice was intended to apply to a voluntary summer
11 term that school districts are not required to offer, and with employment rights that, under the
12 Education Code, are completely unrelated to rights affiliated with employment during the regular
13 academic year.

14 **D. The Loss of Customary Summer Work**

15 CUIAB has erroneously affirmed eligibility of claimants for summer benefits due to the
16 mere fact that they were *available* for summer session work, or had *some* experience working
17 during a recent summer session. The DISTRICT'S cross-complaint challenges the CUIAB's
18 erroneous reliance upon Precedent Benefit Decisions P-B-412 and 417 to base the eligibility of
19 claimants Mark Fiore (UESF Petition, Exh. B) and Jose Rios (UESF Petition, Exh. G) on a *single*
20 day of work during the current (2011) or previous (2010) summer school session, on the rationale
21 that the *single* day of summer school work somehow created a "reasonable expectation" of
22 summer work that overrode Unemployment Insurance Code section 1253.3.

23 A simple review of Precedent Benefit Decisions P-B-412 and 417 shows that they are
24 completely distinguishable and cannot be used as a basis for finding eligibility based on past
25 summer school work. The CUIAB, in Precedent Benefit Decision P-B-412 (RJN, Exh. D), ruled
26 that a claimant had a reasonable expectation of summer work when he was reduced from a 12-
27 month to a 10-month schedule (with the two lost months coinciding with the summer), since it
28 was "clear that the cause of his unemployment was not a normal summer recess or vacation
period but the loss of customary summer work." (Emphasis Provided.) In Precedent Benefit
Decision P-B-417 (RJN, Exh. E), based on similar facts, the CUIAB again based eligibility on

1 "the loss of customary summer work," but only for the first year in which the employee served
2 under the reduced schedule.

3 As the CUIAB stated in Precedent Benefit Decision P-B-431 (RJN, Exh. F), eligibility is
4 limited to the first year (in that decision, 1981) in which the employee suffered a loss in months:

5 At that point there was no cancellation of agreed-upon summer work as no such
6 commitment was ever made. Certainly code section 1253.3 is applicable to their
7 claims for benefits for the summer of 1981. We do not believe that once a school
8 employee has been employed on a 12-month basis and the contract is thereafter
9 changed that the employee will always remain entitled to benefits during the recess
10 period.

11 Precedent Benefit Decisions P-B-412 and P-B-417 do not stand for the proposition that a
12 history of work in the previous summer, or availability for work in the current summer, make the
13 summer school term an "academic term." Rather, there has to be an actual loss of summer work
14 (such as a claimant receiving a summer school assignment in 2011, and having it cancelled due to
15 low enrollment) to constitute an actual loss of summer session work. It is an abuse of discretion
16 to equate the inability to find a summer school assignment – to which there is no guarantee of
17 employment – with a "loss of customary summer work," based only on a single day of summer
18 school work, as CUIAB did in the *Fiore* and *Rios* cases.

19 **E. Judge Warren's 2005 Order is Not Res Judicata.**

20 UESF contends that a 2005 "Statement of Decision" from Hon. James L. Warren (Case
21 No. CPF 05-504939) ("Warren Order") serves as res judicata as to the claims raised herein.
22 Although the Warren Order arose from litigation between CUAIB and the DISTRICT, it has no
23 preclusive effect here.

24 The Warren Order notes that the DISTRICT "contend[ed] that [Unemployment Insurance
25 Code § 1253.3] "operates as a blanket prohibition on payment of unemployment benefits to
26 unemployed substitute teachers during the summer, regardless of whether a school district
27 operates a summer school." (Warren Order, 2: 17-19.) The Warren Order did not adopt the
28 DISTRICT's contention that the statute effectuated a "blanket prohibition" against eligibility, but
acknowledged the "potential" eligibility of claimants for benefits under that statute. The Warren

1 Order left a significant question unaddressed: under what circumstances any particular claimant
2 would be eligible for benefits.

3 1. The Current Dispute Raises Issues Not “Actually Litigated” in the
4 Warren Order

5 “[A] judgment or order in a collateral proceeding of this character is res judicata in a
6 subsequent action only as to matters actually litigated in the prior proceeding.” (*John Breuner*
7 *Co. v. Superior Court in and for City and County of San Francisco* (1952) 112 Cal.App.2d 304,
8 308.)

9 Definition of “Academic Year”: The DISTRICT’s Cross Complaint asks the Court to
10 apply Education Code section 37620’s definition of an “Academic Year.” (Cross Complaint, ¶7.)
11 The Warren Order concludes that, for the purposes of that statute, the “academic year” was
12 defined as July 1, to June 30, under a different statute – Education Code section 37200. The
13 Warren Order admits that it considered the definition of “academic year” without considering
14 Education Code section 37620: “[Without] any potentially applicable California legislation that
15 defines ‘academic year’ as something less than a ‘year’, the term ‘academic year’ referred to the
16 period of July 1 through June 30 under Education Code section 37200, and that, for the purposes
17 of Unemployment Insurance Code section 1253.3, there was no period “between” academic
18 years. (Warren Order, 4:24-5:5.) Therefore, the Warren Order does not preclude this Court from
19 interpreting the term “academic year” as that term is defined under a different statute -- Education
20 Code section 37620 – as is urged in the DISTRICT’s Cross Complaint.

21 Basing Eligibility on Summer School Work: Moreover, the Warren Order only
22 interprets the terms “academic year” and “academic term” in upholding the CUIAB’s finding that
23 claimants “*potentially* were eligible during the summer term.” (Warren Order, 5:9-10.)
24 (Emphasis Provided.) “Consistent with the express language of section 1253.3, CUIAB
25 appropriately limited [claimants’] *potential* eligibility to the summer term, and excluded the true
26 summer recess periods on either side of it.” (Warren Order, 5:11-12.) (Emphasis Provided.)
27 Therefore, by its express terms, the Warren Order only held that, based on its definition of
28 “academic year” and “academic term,” claimants could be “*potentially eligible*” for benefits

1 during the summer session (but not the recess period before and after it.) It did not rule, or
 2 purport to rule, under what circumstances a claimant would be eligible for benefits during the
 3 DISTRICT' summer school session.

4 Here, the DISTRICT has specifically challenged, through its Cross Complaint, the
 5 CUIAB's practice of awarding benefits to claimants based on their mere availability for summer
 6 session work, or upon previous summer school work, purportedly under the authority of
 7 Precedent Benefit Decisions P-B-412 and 417, which have been distinguished above. The
 8 Warren Order cannot have any binding or preclusive effect on the issues raised in the
 9 DISTRICT's Cross Complaint as to the CUAIB's erroneous reliance upon Precedent Benefit
 10 Decisions P-B-412 and 417 to affirm eligibility, as the Warren Order does not address that issue.

11 The Warren Order ruled that Unemployment Insurance Code section 1253.3 did not
 12 impose a "blanket" prohibition on eligibility during the summer school term. What UESF seeks
 13 in the current matter is something more: an adjudication that school-term employees have
 14 *blanket eligibility* for summer session benefits in *all* cases. Even the most contorted reading of
 15 the Warren Order will not support a conclusion that it holds that all claimants are categorically
 16 eligible for benefits during the summer session.

17 2. **Res Judicata Does Not Apply to Questions of Law Involving the Public**
 18 **Interest.**

19 Whether Unemployment Insurance Code § 1253.3 precludes eligibility for school-term
 20 employees during the summer recess period is a question of law involving the public interest in
 21 ensuring the lawful allocation of public education funding. The California Supreme Court has
 22 stated that "when the issue is a question of law rather than of fact, the prior determination is not
 23 conclusive either if injustice would result or if the public interest requires that relitigation not be
 24 foreclosed." (*Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 622 (*quoting City of*
 25 *Sacramento v. State of California* (1990) 50 Cal.3d 51, 64).)

26 In *Kopp*, the California Supreme Court declined to apply *res judicata* to a legal challenge
 27 concerning a ballot initiative regarding campaign finance limitations. In so doing, it cited *City of*
 28 *Sacramento*, in which the Court declined to apply *res judicata* on the issue of whether the

1 extension of unemployment insurance to include state and local governments constituted a
2 reimbursable state mandate. The court stated that “[i]f the result of [the earlier litigation] is wrong
3 but unimpeachable, taxpayers statewide will suffer unjustly the consequences of the state’s
4 continuing obligation to fund [the state mandate].” (*City of Sacramento, supra*, at 64-65 (citing
5 *Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251 (public interest
6 exception applied to allow relitigation of whether school districts may charge for school
7 transportation).)

8 Here, even if the Court does find that the Warren Order potentially has *res judicata* over
9 the claims raised herein, it should invoke the public interest exception.

10 **F. The CUIAB’s Calandrelli Decision.**

11 UESF claims that the CUIAB abused its discretion in not categorically treating the
12 DISTRICT’s summer school session as an “academic term,” with the impact of creating blanket
13 eligibility for all school-term employees during the entire summer break. Such an outcome is not
14 compelled by the Warren Order, and completely violates the plain meaning and intent of
15 Unemployment Insurance Code § 1253.3.

16 The CUIAB, on November 30, 2012, issued the decision in the *Calandrelli* case, which
17 dealt with eligibility issues for the summer of 2011. The CUIAB had agendized the *Calandrelli*
18 decision as designation as a Precedent Benefit decision at its January, 2013 meeting. (RJN, Exh.
19 G), and action was subsequently tabled pending the outcome of this litigation.

20 In the *Calandrelli* matter, the CUIAB interprets Unemployment Insurance Code § 1253.3
21 in a manner that is consistent with the ruling in the Judge Warren Order that allows school-term
22 employees to be “potentially” eligible for benefits during the summer school term, yet applies the
23 statute to require ineligibility in cases where the summer session cannot be an “academic term” as
24 applied to the circumstances of the particular claimant.

25 The CUAIB, in *Calandrelli*, summarized the legislative history behind the federal statute,
26 noting that:

27 Congress discussed how to address the summer time period for school employees
28 who work a traditional school year and have a summer recess period. Congress
did not intend to provide school employees with paid vacations over the summer,

1 but wanted to provide protections *for those school employees who had lost*
 2 *employment.* [Citation Omitted.] According to Congress, teachers who worked
 3 during the 9-month academic year are ‘really not unemployed during the summer
 4 recess’ but can choose ‘to take other employment’ during the summer. [Citation
 5 Omitted.] The intent of Congress was to ‘prohibit payment of unemployment
 6 benefits during the summer, and other vacation periods, to permanently employed
 7 teachers and other professional school employees. [Citation Omitted.]
 8 (*Calandrelli* [SFUSD RJN, Exh. H], p. 4.) (Emphasis Provided.)

9 The CUAIB also noted that in 1977 Congress amended the statute to add the reference to
 10 “terms,” and quoted the existing statute to require ‘denial of benefits to teachers during periods
 11 between academic years for those teachers ... who have reasonable assurance that they will be
 12 reemployed *in the fall.*’ [Citation Omitted.] (*Calandrelli*, p. 5.) (Emphasis Provided.) (*See, e.g.*,
 13 RJN, Exh. I.) The CUIAB also noted that “the academic term is a term within the regular
 14 academic year,” citing the legislative history. (*Calandrelli*, p. 5.) Again, the legislative history
 15 establishes that an “academic term” is intended to be contained within an “academic year.” This
 16 would prevent the summer school session from being considered an “academic term” within the
 17 175-day “academic year” defined in Education Code section 37620.

18 The CUIAB, in affirming that *Calandrelli* was ineligible for summer benefits, stated that:
 19
 20 In this case, the claimant was only required to perform services during the
 21 traditional academic school year. Because the claimant was *not required* to
 22 perform services during the summer school session and because the summer
 23 school session is outside of the traditional schedule, it cannot be argued that the
 24 summer session became part of the regular academic year *for this claimant and*
 25 *was thus a term for this claimant.* (*Calandrelli*, p. 6.) (Emphasis Provided.)

26 The CUIAB recognized that, as a school-term employee, the claimant was *not required* to work
 27 during the summer session. In fact, no school-term employee is *required* to work during the
 28 summer session. The legislative history of the statute also demonstrates that the statute was
 modeled upon a traditional school year starting in the fall and ending in the spring, with a
 traditional summer recess. Somehow treating the optional summer session as an “academic term”
 for which a school district must provide reasonable assurance in order to invoke the ineligibility
 required under Unemployment Insurance Code § 1253.3 is a perversion of both the plain
 language and legislative intent behind the statute.

1 **IV. CONCLUSION**

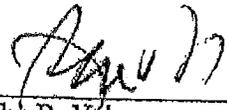
2 School-term employees having reasonable assurance of returning to their positions the
3 following fall are not eligible for benefits during the summer. The federal statute upon which
4 Unemployment Insurance Code § 1253.3 is modeled is premised upon a traditional school term
5 beginning in the fall and ending in the spring, with a traditional summer recess.

6 There is nothing in the federal or State statute that allows a school district's summer
7 school session to override the recess-period ineligibility intended by Unemployment Insurance
8 Code section 1253.3. Treating the DISTRICT's summer session as an "academic term" similar to
9 the fall or spring term of the traditional school year violates the basic premise upon which
10 Unemployment Insurance Code § 1253.3 is based. Furthermore, there is absolutely no legal basis
11 on which to override Unemployment Insurance Code § 1253.3, and base eligibility upon a
12 claimant's merely availability for work during the summer session, or upon any past history of
13 summer school period. Precedent Benefit decisions P-B 412 and 417 based eligibility upon the
14 "loss of customary summer work," suffered by an employee who lost two (summer) months from
15 a previous 12-month assignment. That scenario is a far cry from an employee who is unable to
16 find a summer school position.

17 Unemployment insurance is intended for those employees who *lose* employment that they
18 once held, not for those unable to obtain employment that they never held. UESF's urged
19 interpretation of Unemployment Insurance Code section 1253.3 violates this basic tenet.

20 Dated: November 8, 2013

Burke, Williams & Sorensen, LLP

21
22
23 By: 
24 John R. Yeh
25 Attorneys for Cross-Complaint and Real
26 Party In Interest
27 SAN FRANCISCO UNIFIED SCHOOL
28 DISTRICT



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

ALICIA K BRADY
Claimant

ONTARIO MONTCLAIR SCHOOL DISTRICT
Account No.: [REDACTED]
Employer-Appellant

Case No.: **AO-337099 (EUC)**

OA Decision No.: 4910066

EDD: 0490 BYB: 06/24/2012

DECISION

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

MICHAEL ALLEN

ROBERT DRESSER

ROY ASHBURN, Dissenting

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.

Date Mailed:

Nov 27, 2013

Case No.: AO-337099
Claimant: ALICIA K BRADY

The employer appealed from the portion of the decision of the administrative law judge that held the claimant eligible for unemployment insurance benefits under section 1253.3 of the Unemployment Insurance Code¹ for the period beginning May 26, 2013 through July 13, 2013.

ISSUE STATEMENT

The issue presented is whether a substitute teacher may be entitled to benefits during the weeks a school district operates summer school within the meaning of section 1253.3 of the code.

FINDINGS OF FACT

The claimant works as a substitute teacher for the Ontario-Montclair School District (hereinafter, the district). Substitute employees, whether professional or nonprofessional, are not paid an annual salary. They receive wages, only if called, for days worked. (See definitions per U.S. Dept. of Labor, UIPL No. 15-92 (Jan. 27, 1992), citing 26 U.S.C. Section 3304(a)(6)(A).)

During the 2012-2013 school year, the claimant worked for the district as an on-call substitute teacher. The spring term ended on May 22, 2013. The claimant filed a claim for unemployment insurance benefits and the employer filed a timely protest to the claim.

The employer protested that the summer break would run from May 28, 2013 to July 31, 2013, and that the claimant was not on-call during the summer break. On June 13, 2013, the Employment Development Department determined the claimant was not eligible for benefits under code section 1253.3, beginning May 26, 2013. The claimant filed a timely appeal from the determination and the matter was set for hearing before an Administrative Law Judge (hereinafter ALJ).

At the hearing before the ALJ, the employer introduced a copy of the letter of reasonable assurance addressed to "Substitute Employee." The letter stated, in relevant part: "If your services are needed for the 2013 summer school session, you will be called or notified by mail." (Exhibit 10.) The district's summer school

¹ All statutory references are to the Unemployment Insurance Code, unless otherwise noted.

session was conducted from May 28, 2013 through June 21, 2013. The claimant was available for work as an on-call substitute teacher during the summer school session.

The claimant was not called to work as a substitute teacher for summer school because the district contacted all interested permanent teachers before substitute teachers were called.² There is no list for substitute teachers for summer school in the record before us.

On July 9, 2013, the employer offered the claimant a contract for permanent employment beginning August 1, 2013, which she accepted. The claimant began the fall school term as a permanent teacher August 1, 2013.

The ALJ held the claimant eligible for unemployment insurance benefits for the period beginning May 26, 2013 through July 13, 2013. But, the ALJ held the claimant ineligible for benefits beginning July 14, 2013 through July 31, 2013.

REASONS FOR DECISION

The claimant, a substitute public school teacher for the district, sought unemployment insurance benefits during the summer of 2013. Because the claimant performs services for a public school and has base period wages from that service, the case meets the threshold test of Unemployment Insurance Code section 1253.3. In this case, we are called upon to examine the possible entitlement to benefits for a substitute teacher during the weeks the district conducted a summer school session.

On October 20, 1976, Congress passed the omnibus "Unemployment Insurance Amendments of 1976." (90 Stat. 2667, Public Law 94-566.) Becoming effective on January 1, 1978, it substantially amended the Federal Unemployment Tax Act, (hereinafter referred to as FUTA). (26 U.S.C.A. sections 3301 through 3311.) Public school employees, at the primary and secondary levels, were added to unemployment insurance coverage for "service" wages to which FUTA applies.

Both the federal and state statutes created the "equal treatment" provision for school employees. The federal statute, 26 USC Chapter 23, Section

² The employer has submitted additional evidence with its appeal that should have been presented at the hearing. There was no showing why the employer could not have submitted the evidence at the hearing before the ALJ. The claimant and the ALJ were denied the opportunity to rebut or consider it. In the notice of hearing, the parties were advised to bring all evidence to the hearing. To consider this information now would be improper and would violate due process. Therefore, the additional evidence has not been considered in reaching our decision.

3304(a)(6)(A), provides in pertinent part: "compensation is payable on the basis of service to which section 3309(a)(1) [26 USCS section 3309] applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law..." (See also, Unemployment Insurance Code section 1253.3, subdivision (a).)

Exceptions to the provisions of FUTA are called the 'denial provisions.' (26 USC Chapter 23, Section 3304(a)(6)(A), subsections i-vi, see also Unemployment Insurance Program Letter (hereinafter UIPL) No.15-92 (1992).) California's statute was amended in 1978 to mirror the federal provisions in FUTA. In essence, unemployment insurance benefits 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. (Code section 1253.3, subdivisions (b) and (c) in pertinent part, emphasis added.)

Neither Congress nor the California Legislature defined the highlighted words used in the denial provisions, above. The Court of Appeal has construed the meaning of the term "reasonable assurance" in three cases, discussed below.

In *Russ v. California Unemployment Insurance Appeals Board* (1981) 125 Cal.App.3d 834, the Court noted that the term "reasonable assurance" was used in, but was not defined in, FUTA. The *Russ* Court relied on Congressional intent, quoting the Joint Explanatory Statement of the Committee of Conference, 1976 U.S. Code Congressional and Administrative News at pp. 6033, 6036. (*Russ*, *supra*, at 843-846.) "...[T]he 'federal law' underlying section 1253.3 may be interpreted to define 'reasonable assurance' of reemployment as an unenforceable 'agreement' ..., and that this interpretation may apply to the definition of 'reasonable assurance' provided in section 1253.3...". (*Russ*, at 295.) Thus, section 3304 (a), subsection (6)(A) was "...amended to provide, in effect, that public school employees might be eligible for benefits 'except' in certain instances involving their unemployment during periods of summer **recess** at the employing schools." (*Russ v. Unemployment Insurance Appeals Board* (1981) 125 Cal.App.3d 834, 843, emphasis added.)

Within a few years California's Court of Appeal again interpreted the meaning of "reasonable assurance." It clarified that "[a] contingent assignment is not 'reasonable assurance' of continued employment within the meaning of section 1253.3." (*Cervisi v. Unemployment Insurance Appeals Board* (1989) 208 Cal.App.3d 635, 639.)

In 1984, *Board of Education of the Long Beach Unified School District v. Unemployment Insurance Appeals Board* (1984) 160 Cal.App.3d 674, (hereinafter, *Long Beach*) the Court held that the inherently tenuous nature of employment status as an on-call, substitute teacher did not defeat the "reasonable assurance" given to a substitute school employee. The court applied the denial provisions to substitute teachers without substantial reference to the Congressional discussion of the 1976 Congress. Relying on legislation passed after the 1976 amendments (1977 Public Law No. 95-19), the *Long Beach* court addressed Congressional intent to include substitute school employees in the denial provisions in a footnote. In footnote 2, the *Long Beach* court observed that Congress did not specify that substitute teachers were not to be included in the 'denial' provisions.³

In *Long Beach*, the Court noted the realities of the situation applicable to substitute teaching employment, and cautioned that for a substitute teacher there can be no absolute guarantee of work. The Court reasoned, "There is nothing in section 1253.3 which sets, as a criteria, the tenuous nature of a substitute teacher's position as a basis for determining the 'reasonable assurance' issue." (Ibid. at 683.) The Court concluded the claimant was "ineligible for **summer recess** unemployment benefits **during summer vacation periods** having 'reasonable assurance' of such post recess employment within the meaning and intent of section 1253.3." (*Long Beach, supra*, at 691, emphasis added.)

The *Long Beach* Court, like *Russ* used the terms "**summer recess**" or "**summer vacation periods**" interchangeably for the statutory language, "period between two successive academic years or terms." This terminology can be traced to deliberations in Congress. The issue in this case is whether there is a "summer recess" or "summer vacation period" for substitute teachers when the district schedules summer school sessions for which the substitute teacher is eligible to work.

³ *Long Beach* noted that, because the omnibus Unemployment Insurance Amendments of 1976, *supra*, would not become effective until 1978, Congress passed the Emergency Unemployment Compensation Extension [EUC] Act of 1977 a year after the 1976 passage of Public Law 94-566. (Public Law 95-19, H.R. 4800, 91 Stat. 39). This was not the SUA referred to in footnote 6, and was not incorporated into the 1976 omnibus Act, *supra*. It provided emergency unemployment compensation (EUC) benefits for eligible claimants for one year. It extended the EUC Act of 1974, which had been enacted as a temporary program for workers who exhaust their entitlement to both regular and extended benefits. In the Senate version of the 1977 bill (Senate Report No. 95-67), according to the Senate Report and the House Conference Report, the bill eliminated the House provision disqualifying substitute teachers from unemployment compensation "...if the individual is not employed as a teacher on at least 45 separate days." (Joint Explanatory Statement of the Committee of Conference, 1977, U.S. Code Congressional and Administrative News, at pp. 80 and 103.) Thus, the subsequent bill in 1977 eliminated a disqualification for substitute teachers.

The statute is not clear on its face, in light of existing summer school or year round tracks. Because the phrase “academic years or term,” is not defined in the code nor in the cases discussed above, it is necessary to carefully analyze the intent of Congress.

“In determining the intent of the Legislature to effectuate the purpose of the law, ‘...a court must look first to the words of the statute themselves, giving the language its usual, ordinary import....The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. Rules of statutory construction require courts to construe a statute to promote its purpose, render it reasonable, and avoid absurd consequences. Exceptions to the general provisions of a statute are to be narrowly construed; only those circumstances that are within the words and reason of the exception may be included. [Citations omitted.]” (*Corbett v. Hayward Dodge* (2004) 119 Cal.App.4th 915, 921.)

The conference committee report identified the issues considered by both houses of Congress. ⁴ It indicated that Congress intended the language “between academic years or terms” to refer to **summer recess** vacation, and that Congress intended to prevent receipt of unemployment benefits by fully employed or salaried professional and nonprofessional school employees, whether they worked pursuant to tenure, contract or agreement. There is no reference in the summary to substitute employees. (Joint Explanatory Statement of the Committee of Conference, 1976, U.S. Code Congressional and Administrative News, at pp. 6030 - 6050.)

In the omnibus “Unemployment Insurance Amendments of 1976” Public Law 94-566 (FUTA, 1976), Congress considered the inclusion of public school employees in the unemployment compensation program. With regard to the summer **recess** period, Congress did not intend to provide fully employed school employees with subsidized **recess** vacations. (122 Cong. Rec. 33284-85 (1976).)

Congress intended the denial provisions of FUTA to address the fact that some traditional, “nine-month” teachers are paid on an annual basis, and should not need unemployment benefits to bridge periods when schools are out of session over a summer **recess**. The “denial” provisions were intended to prevent overcompensation of teachers who are paid a reasonable annual salary based

⁴ The House considered the Unemployment Compensation Amendments of 1976 (Public Law No. 94-566) on July 20, 1976, and the Senate considered the bill on September 29, 1976. Both houses considered the conference committee version on October 1, 1976.

on work performed over nine months of the year. (122 Cong. Rec. 33284-33285 and 35132 (1976).)

The intent of Congress was to “prohibit payment of unemployment benefits during the **summer and other vacation** periods, to permanently employed teachers and other school employees.” (122 Cong.Rec.35132 (1976), emphasis added.) Nevertheless, the denial provisions do not expressly exclude substitute professional and nonprofessional employees, who are not paid an annual salary and are not permanent employees.

Both the United States Department of Labor and state agencies, as well as case law, have consistently construed the “denial” exceptions narrowly.⁵ “Social legislation such as the FUTA is to be construed broadly with respect to coverage and benefits. Exceptions to its statutory remedies are to be narrowly construed. (citation omitted.)” (UIPL 43-93, Sept. 30, 1994, and Guide Sheet 8, http://wdr.doleta.gov/directives/attach/ETAH/301/guide_sheet_8.htm.)

“The very specificity of the exemptions, . . . , and the generality of the employment definitions indicate that the [generalities] are to be construed to accomplish the purposes of the legislation.” (*United States v. Silk* (1947) 331 U.S. 704, 712.) “The provisions of the Unemployment Insurance Code must be liberally construed to further the legislative objective of *reducing the hardship of unemployment*. (citations omitted.)” (*Prescod v. Unemployment Insurance Appeals Board* (1976) 57 Cal.App.3d 29, 40, emphasis in original.)

Generally, a state may afford greater coverage for unemployment benefits than FUTA, but may not provide less. “This state has always been able to provide coverage beyond the extent provided by federal law. However, it must provide coverage to those who would qualify for benefits under federal law, and specifically in this case under Section 3304(a)(6) of Title 26.” (Precedent Benefit Decision P-B-461, p. 4 construing a legislative amendment to section 1253.3

⁵ The Employment Training Administration of the Department of Labor, has published guidance for states to follow in application of the denial provisions affecting educational employees: “Conformity Requirements for State UC [Unemployment Compensation] Laws; Educational Employees: The Between and Within Terms Denial Provisions.”

(http://workforcesecurity.doleta.gov/unemploy/pdf/uilaws_termsdenial.pdf.) The Department of Labor (DOL) answered “Frequently Asked Questions,” explaining “An academic term is that period of time within an academic year when classes are held. Examples include semesters and trimesters. Terms can also be other nontraditional periods of time when classes are held, such as summer sessions.” This directive is an interpretative rule which explains or defines particular terms in a statute, within the meaning of *Cabais v. Egger* (D.C. Cir. 1982) 690 F.2d 234. *Cabais* specifically addressed the Dept. of Labor’s UIPLs. (Pub. Law 89-553; 5 U.S.C. sections 551-559, 553(b).) As a Department of Labor directive, the “Conformity Requirements” statement carries the weight of law. (UIPL No. 01-96, 1995.)

which resulted in expanded benefit coverage. See also, Dept. of Labor, UIPL No. 43-93, 1993; and UIPL No. 01-96, 1995.)

As an exception to the general statutory goal of providing benefits to the unemployed, section 1253.3 should be narrowly construed. Since the original purpose of the law is not served by including employees other than traditional 'nine month' school employees with permanent employment, a narrow application of the denial provision is warranted.

In California, this Board has found the denial provisions inapplicable in certain cases, despite the presence of reasonable assurance, during the period between successive academic years or terms for fulltime permanent employees. California amended code section 1253.3 in 1978, the year FUTA denial provisions became effective. During that year, California voters passed Proposition 13, resulting in reductions in school budgets. By the summer of 1979, many school districts across the state closed down for a month or more during summer, due to budgetary constraints. Despite the fact that the lack of work occurred during the summer between two successive academic years or terms, and despite the fact that claimants had reasonable assurance of returning to work in the fall, benefits were payable because that was not a normal **recess** period.

"During the summer of 1978, the Employment Development Department and the United States Department of Labor reevaluated the applicability of section 1253.3 to professional and nonprofessional school employees who were scheduled to teach or work during the 1978 summer school session." (Precedent Benefit Decision P-B- 412 (1980), p.3.) Following an analysis of the Congressional Record, this Board determined, "...it is not the intent of Congress to deny benefits to year-round employees or those regularly scheduled for summer work who, due to cancellation of normal or scheduled summer work, became unemployed. (Congressional Record, September 29, 1976, Vol.122, No. 149, S17013-4; September 29, 1976, Vol.122, No. 149, S17022-3; October 1, 1976, Vol.151, Part II, H12172 [see also Public Law 94-566].)" (P-B-412, at page 3.)

The Appeals Board, in Precedent Decision P-B-417 (1981), relied on the same analysis, finding a clerical employee whose year round contract was reduced to ten months, to be eligible for benefits. The Board found that "...the cause of her unemployment was not a normal **summer recess**⁶ or vacation period, but loss of customary summer work." (*Id.*, emphasis added.)

⁶ The court in *Russ* explained that "...public school employees might be eligible for benefits 'except' in certain instances involving their unemployment during periods of summer **recess** at the employing schools." (*Russ v. Unemployment Insurance Appeals Board* (1981) 125 Cal.App.3d 834, 843, emphasis

Thus, Congress and California case law, as well as Board Precedent Decisions use "summer recess" "summer vacation recess" interchangeably for the statutory language "during the period between two successive academic years or terms." The fact that an employee's services end at the conclusion of an academic year or term, does not mean that the separation is a result of a summer **recess**.⁷ The lack of employment is due to loss of scheduled work. Therefore, benefits are payable.

California's Precedent Decisions establish that salaried professional and nonprofessional school employees, who are unemployed due to budget cutbacks, are not disqualified within the meaning of section 1253.3 even though the claim was filed between "two successive academic years or terms," and even though they had reasonable assurance of returning to work. Although the employees had reasonable assurance of employment in the fall, the loss of work, due to budget constraints, excluded their claims from analysis under the denial provisions of section 1253.3.

When a substitute teacher is scheduled to work "on-call" during the spring term or the fall term and then is not called to work, that claimant's unemployment results from a lack of work, and benefits are payable. Similarly, when a substitute teacher is "on-call" during a summer school session, and is not called to work, the claimant is not on **recess**, but is unemployed due to a lack of work.

Accordingly, during a summer school session there is no recess period for eligible substitute teachers because school is in session. Just as during the fall and spring terms, those teachers are not on recess. Benefits are payable to listed or eligible substitute teachers during a summer school session because while school is in session, it is not a recess period.

Generally, the burden of proof is on the party for each fact the existence or nonexistence of which is essential to its claim for relief or affirmative defense. (Evidence Code section 500.) The Court may alter the normal allocation of the burden of proof depending upon such factors as the knowledge of the parties

added.) And, the *Long Beach* Court concluded the claimant was "ineligible for **summer recess** unemployment benefits **during summer vacation periods** having 'reasonable assurance' of such post recess employment within the meaning and intent of section 1253.3." (*Long Beach, supra*, at 691, emphasis added.)

⁷ The Employment Development Department published its twenty four page directive in 2007, explaining three elements are required for the denial provisions to apply: school wages in the base period; claim filed during a school recess period; and reasonable assurance must exist. (www.edd.ca.gov/uibdg/Miscellaneous_MI_65.htm.) This directive is in accord with the U.S. Dept. of Labor "Conformity Requirements for State UC [Unemployment Compensation] Laws; Educational Employees: The Between and Within Terms Denial Provisions." (*supra*, at footnote 5.)

concerning the particular facts, the availability of the evidence to the parties, the probability of the existence of a fact, and public policy. (*Morris v. Williams* (1967) 67 C.2d 733, cited in P-B-490. (See also *Sanchez v. Unemployment Insurance Appeals Board* (1977), 20 Cal. 3d 55, *Glick v. Unemployment Insurance Appeals Board* (1979), 23 Cal. 3d 493.)⁸

The claimant may produce evidence that he or she is on a list to be called for substitute work during the summer session. If there is no list, the claimant may produce evidence that he or she is considered eligible for summer school work. Thereafter, the burden of proof on the issue lies with the employer.

A claimant's evidence might include, but is not limited to, the claimant's contacts with the district or a school site, informing them of his or her availability and requests for work. The evidence might show there are school site-specific lists, or there is a stratified list (for instance, one preferring permanent teachers or laid-off teachers, but on which the claimant is potentially reachable to be called). In this case, the evidence established the claimant was notified "If your services are needed for the 2013 summer school session, you will be called or notified by mail."

Once a claimant produces credible evidence he or she is on a list or is eligible to be called for summer school employment, the employer must prove that the claimant is not eligible. The fact that the claimant is not called for work is insufficient to find he or she is not eligible for work. In this case, the employer's witness testified that the district did not call the claimant because the district calls permanent teachers first, and there was not enough work for the regular substitute teachers during the summer session. In addition, the employer's letter to the claimant states the claimant might be called or notified by mail, if her services are needed during the summer school session. This established that the claimant was unemployed due to lack of work, and not that she was unemployed due to a summer recess period. The fact that the claimant was not called to work during the summer session does not result in a denial of benefits.

Benefits are payable to substitute teachers during traditional school sessions or year round tracks, who are qualified and eligible to teach, for the days that teacher is not needed or called. During a summer school session, benefits are

⁸ The Employment Development Department assists employers with *The Claims Management Handbook for School Employers* (DE 3450SEF rev. 3, May, 2008) ("Employer's Handbook") The department advises school employers to respond to the DE 1101CZ to protect the district's unemployment insurance tax account from charges. "Responding to the DE 1101CZ also allows the employer to be included as an interested party in any appeal that may be filed. And, [t]he employer's UI tax account will only be protected by returning a timely response to the EDD." ("Employer's Handbook", page 31.)

equally payable to substitute teachers who are qualified and eligible for substitute work.

The weight of the evidence establishes that the claimant was qualified and eligible for work during the summer school session. Therefore, she was not on recess within the meaning of section 1253.3 of the code and the denial provisions do not apply for the weeks of the summer school session. The administrative law judge in this case held that the claimant was eligible for benefits during the weeks the summer school session was scheduled, from May 28, 2013 through June 22, 2013. We will affirm that portion of the decision on modified rationale.

The claimant was given reasonable assurance that she would have work as a substitute teacher in the fall term. This issue was not contested at the hearing before the ALJ. Accordingly, the claimant is not eligible for benefits during the weeks beginning June 23, 2013 through July 31, 2013, since those weeks were a summer recess and the claimant had reasonable assurance of working in the fall term.

DECISION

The appealed portions of the decision of the administrative law judge are reversed in part and affirmed in part, on modified rationale. The claimant is eligible for benefits beginning May 26, 2013 through June 22, 2013, pursuant to section 1253.3 of the Code. Benefits are payable provided the claimant is otherwise eligible.

The claimant is not eligible for benefits beginning June 23 through July 13, 2013, pursuant to section 1253.3 of the code. Benefits for those weeks are denied.



SAN JOSE OFFICE OF APPEALS
2665 N FIRST ST STE 100
SAN JOSE CA 95134

(408) 232-3036

ALICIA K BRADY
Claimant-Appellant

ONTARIO MONTCLAIR SCHOOL
Account No: [REDACTED]
Employer

Case No. 4910066 (EUC)

Issue(s): 1253.3

Date Appeal Filed: 06/17/2013

EDD: 0490 BYB: 06/24/2012

Date and Place of Hearing(s):
(1) 08/29/2013 SAN JOSE

Parties Appearing:
Claimant, Employer

DECISION

The decision in the above-captioned case appears on the following page(s).

The decision is final unless appealed within 20 calendar days from the date of mailing shown below. See the attached "Notice to Parties" for further information on how to file an appeal. If you are entitled to benefits and have a question regarding the payment of benefits, call EDD at 1-800-300-5616.

Keith Bohren, Administrative Law Judge

FILE COPY

Date Mailed: SEP 06 2013

Case No: 4910066
CLT/PET: Alicia K Brady
Parties Appearing: Claimant, Employer
Parties Appearing by Written Statement: None

San Jose Office of Appeals
ALJ: Keith Bohren

ISSUE STATEMENT

The claimant appealed from a determination that held the claimant not eligible for benefits under Unemployment Insurance Code section 1253.3 for an indefinite period beginning May 26 2013. The issue in this case is whether the claimant had a reasonable assurance of returning to work after a customary vacation period.

FINDINGS OF FACT

The claimant had worked for a public school district as a full-time teacher during the 2011/2012 school year. Thereafter the claimant was demoted to a part-time employee and was qualified for unemployment benefits that she longer had a reasonable assurance of being a full-time employee. As of July 9, 2013 the claimant was returned to permanent full-time status.

The school district offered summer school from May 28 through June 21, 2013. The usual summer recess was from May 28 through July 31, 2013.

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).)

“Reasonable assurance” is an agreement which contemplates the reemployment of the employee but which is not legally enforceable. (*Russ v. California Unemployment Insurance Appeals Board* (1981) 125 Cal.App.3d 834.)

In this case the claimant lacked a reasonable assurance of returning to full-time employment prior to the week ending July 13, 2013. Additionally work was available during the summer school session, although the district chose not to utilize part-time employees Therefore the claimant is eligible for benefits under

code section 1253.3 during the period beginning May 26, 2013 through July 13, 2013. Beginning July 14, 2013 the claimant had a reasonable assurance of returning to full-time work. Therefore code section 1253.3 prevents the claimant from being eligible for benefits thereafter during the summer recess.

DECISION

The department's determination is modified.

The claimant is not ineligible for benefits under code section 1253.3 for the period beginning May 26 2013 through July 13, 2013. Benefits are payable provided the claimant is otherwise eligible during said.

Code section 1253.3 prevents the claimant from being eligible for benefits beginning July 14, 2013 during the remaining summer recess period.

Kb

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CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

NAOMI R JORDAN
Claimant

SAN DIEGO UNIFIED SCHOOL DISTRICT
Account No.: [REDACTED]
Employer-Appellant

Case No.: **AO-317936 REMAND**

OA Decision No.: 4683210

EDD: 0250 BYB: 06/17/2012

DECISION

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

ROBERT DRESSER

MICHAEL ALLEN

ROY ASHBURN

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.

Date Mailed: **Nov 26, 2013**

Case No.: AO-317936
Claimant: NAOMI R JORDAN

REM

The employer appealed from the decision of the administrative law judge that held the claimant not subject to the provisions of section 1253.3 of the Unemployment Insurance Code¹ beginning June 17, 2012 through August 25, 2012.

ISSUE STATEMENT

The issue in this case is whether the claimant, a professional² public school employee, is ineligible for benefits under section 1253.3 while the claimant is between successive academic terms, or on an established and customary vacation or recess period with reasonable assurance of performing such services in the second academic term or in the period immediately following the vacation or recess.

FINDINGS OF FACT

Since 2002, the claimant has worked for San Diego Unified School District (district), a public educational institution, as a certified teacher in a preschool. The claimant is a 10-month employee and worked at a preschool which had a traditional 10 month calendar and a summer break. The claimant, however, chose to stretch her 10 months of pay into 12 monthly paychecks. As a full-time regular certified teacher, the claimant was working under a contract negotiated by the school employer and the claimant's union that ran from July 1, 2010 through June 30, 2013. In the summer of 2012, there were ongoing negotiations between the school district and the union concerning the contract.

¹ Unless otherwise indicated, all code references are to California's Unemployment Insurance Code.

² For ease in reference, the school employees are referred to as "professional employees" or "nonprofessional employees," as they are in the Unemployment Insurance Program Letters (hereinafter referred to as UIPL) issued by the U.S. Department of Labor (DOL). "'Professional' is the name given to the services described in clause (i) of [26 U.S.C.] Section 3304(a)(6)(A) as services performed in an 'instructional, research, or principal capacity.' 'Nonprofessional' is the name given to the services described in clause (ii) as services performed in 'any other capacity.'" (U.S. Dept. of Labor, UIPL No. 15-92 (Jan. 27, 1992), citing 26 U.S.C. Section 3304(a)(6)(A).

For the preschool, the 2011-2012 school year ended on June 8, 2012. The last day the claimant performed services for the 2011-2012 school year was also on June 8, 2012. For other schools in the district on a traditional school schedule, the school year ended on June 12, 2012. The claimant's school was on summer recess until approximately September 4, 2012, but the claimant returned to work on August 29, 2012 for training.

In March of 2012, the district provided the claimant with written notice of a potential layoff. On approximately May 24, 2012, the district provided the claimant with written notice that she would be laid off, effective June 30, 2012. Nevertheless, as the claimant had not yet been laid off, she continued to work until the semester ended on June 8, 2012. During this time period and continuing through June 30, 2012, the effective date of the layoff, the claimant was eligible to receive her employee benefits and accrue service credits for purposes of her pension plan. On June 22, 2012, the claimant filed a claim for unemployment benefits, with an effective date of June 17, 2012.

On June 29, 2012, the district sent the claimant an email and a letter notifying her that the notice of layoff issued on May 24, 2012 was rescinded. The June 29 notice specifically stated that "your employment will continue for the 2012-2013 school year." According to the notice, the claimant would remain at the same preschool in the same position. Through this notice, the district assured the claimant that her employment activities would resume at the beginning of the 2012-2013 school year. The claimant returned to work in the week of August 26, 2012.

The claimant testified that, while she was on summer recess from her school, she was on a preschool substitute list for the year-round schools in the district, which were in session until approximately July 17, 2012. The claimant further testified that, during the summer of 2012, she was called to perform substitute work during one particular week, but was unable to take the offered position because her grandmother passed away.³ In addition, the claimant testified that she was also on a substitute list for the summer of 2011 and, through the substitute list, she did work during the summer of 2011. The employer's witness testified that his research regarding the claimant's work history did not indicate that the claimant was on a substitute list for the summer of 2012 or that she had worked on prior substitute assignments. The employer's witness further testified that the year round schools ended on July 21, 2012.

³ To the extent that the claimant's inability to accept this offer may raise an issue as to whether the claimant was able and available for work, under code section 1253, subdivision (c), this issue is not before us in this proceeding and our decision will not be addressing it.

After a hearing, an administrative law judge held that the claimant did not have reasonable assurance at the start of her summer recess and the claimant was not ineligible for benefits for the entire summer recess period under code section 1253.3. The employer has appealed.

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 the academic years or terms and if there is a contract or reasonable assurance that the individual will perform services for any educational institution in the second of the academic years or terms." (Unemployment Insurance Code, § 1253.3, subd. (b) (emphasis added).)

Unemployment insurance benefits are based on wages paid in the base period of a claim. The standard base period of a claim with a benefit year beginning in April, May, or June is the four consecutive quarters which ended the preceding December. (Unemployment Insurance Code, § 1275, subd. (a).)

The U.S Department of Labor (DOL) explained that provisions, such as those contained in code section 1253.3, subdivision (b), affect whether school wages earned in the base period apply to the computation of unemployment benefits. (U.S. Dept. of Labor, Unemployment Insurance Program Letter (UIPL) ⁴ No. 34-80, sub. 4 (May 23, 1980).) These provisions "pertain only to benefits based on school service" and not based on non-school wages. (*Id.*)⁵

⁴ "The United States DOL is the federal agency responsible for ensuring that state unemployment laws comply with the mandatory federal criteria set out by Congress." (*Dole Hawaii Division-Castle & Cooke, Inc. v. Ramil* (Haw. 1990) 71 Haw. 419, 426 (internal citations omitted).) In order for California to qualify for federal funding for this State's unemployment insurance program and for private employers in California to be eligible for federal tax credits for unemployment contributions, California's unemployment compensation laws must comply with the standards set forth in the Federal Unemployment Tax Act of 1954 (hereinafter referred to as "FUTA"), codified at 26 U.S.C. §§ 3301-3311.). (See e.g., *Russ v. California Unemployment Insurance Appeals Board* (1981) 125 Cal.App.3d 834, 842.) Thus, the UIPL's by the DOL may be used as persuasive interpretations of the federal law. (*Ibid.*)

⁵ Accordingly, a claimant who is ineligible for benefits during the summer recess due to reasonable assurance under code section 1253.3, may still be eligible for benefits during the summer recess if the "claimant has sufficient non-school employment and earnings in the base period to qualify for benefits." (*Id.*) In the case before us, the record indicates that the claimant may have non-school wages from the City of San Diego during her base period. The issue of whether the claimant has sufficient nonschool wages to qualify for a valid claim is not before us and our decision will not be addressing that issue.

"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, § 1253.3, subd. (g).)

When an employer provides "reasonable assurance," the employer is entering into an agreement which contemplates the reemployment of the employee, but which is not legally enforceable. (*Russ v. California Unemployment Insurance Appeals Board* (1981) 125 Cal.App.3d 834.)

The DOL defines "reasonable assurance" as "a written, oral, or implied agreement that the employee will perform services in the same or similar capacity" in the next academic year or term. (UIPL No. 04-87, sub. 3 (Dec. 24, 1986).)

In its UIPL No. 04-87, the DOL outlined the principles to apply in determining whether reasonable assurance exists:

"(1) There must be a bona fide offer of employment in the second academic period in order for a reasonable assurance to exist.

(2) An offer of employment is not bona fide if only a possibility of employment exists. This would occur if the circumstances under which the claimant would be employed are not within the control of the educational institution and the institution cannot provide evidence that such claimants normally perform services following the academic year.

(3) Reasonable assurance exists only if the economic terms and conditions of the job offered in the second period are not substantially less (as determined under State Law) than the terms and conditions for the job in the first period. . . ."

(Precedent Decision P-B-461 (1988), quoting UIPL No. 04-87, sub. 4.)

As noted above, code section 1253.3, subdivision (b) addresses whether benefits are payable "with respect to any week" between the academic years or terms. The plain meaning of this sentence is that a claimant's eligibility for benefits under this section is to be determined on the circumstances that exist

during the week in question and on a week by week basis⁶ rather than for the entire summer recess period as a whole.

“If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs.” (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2008) 164 Cal.App.4th 1, 8, quoting *Estate of Griswold* (2001) 25 Cal.4th 904, 910-11.) The words are given “their usual, ordinary meanings.” (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063.) The Court of Appeals has applied plain language when determining the meaning of reasonable assurance under section 1253.3. (See *Russ v. Unemployment Ins. Appeals Bd.*, *supra*, 125 Cal. App. 3d at 846.)

The United States DOL has considered the effect of receiving reasonable assurance during a school break and has issued the following guidance:

“A claimant who initially has been determined to not have reasonable assurance will subsequently become subject to the between and within terms denial provisions when the claimant is given such reasonable assurance.”

(UIPL No. 04-87, sub. 4.)

Therefore, according to the DOL, if the claimant starts the summer without reasonable assurance but is provided reasonable assurance during the summer, the claimant becomes ineligible for unemployment insurance benefits under provisions such as code section 1253.3 at the point in time when reasonable assurance is provided.

The viewpoint of the Employment Development Department (EDD) that a week by week analysis is required for a professional employee at a public school is clearly expressed in 22 California Code of Regulations Section 1326-12. In example 12, this regulation indicates that when a professional school employee does not have reasonable assurance at the beginning of the summer break under code section 1253.3, but obtains reasonable assurance during the summer

⁶ In terms of the “any week” language, the Code treats professional school employees who are subject to the provisions of code section 1253.3, subdivision (b) differently from nonprofessional school employees who are subject to the provisions of subdivision (c) because subdivision (i) requires that the nonprofessional school employees under subdivision (c) receive written notice of reasonable assurance 30 days before the end of the school year. (See Precedent Benefit Decision P-B-501.)

break, EDD would find the claimant ineligible for benefits from the date of the reasonable assurance. (*Ibid.*)⁷

Accordingly, EDD takes the position that reasonable assurance should be evaluated on a week by week basis during a recess break. If the claimant commences the summer without reasonable assurance and thereafter obtains reasonable assurance during the summer, the claimant is not ineligible for benefits until such time that there is reasonable assurance. Thus, EDD specifically recognizes that reasonable assurance can be obtained during the summer recess.

Decisions by courts in other states with statutes substantially similar to California's code section 1253.3 have also reached the same conclusion as DOL and EDD. In *Farrell v Labor & Industry Review Com.* (Wis. App. 1988) 433 N.W.2d 269, Wisconsin considered how to handle the situation of professional employees who commenced the summer recess without reasonable assurance but received reasonable assurance during the summer. Wisconsin's statute is substantially similar to California's statute in that it finds that a professional school employee "is ineligible for benefits based on such services *for any week* of unemployment which occurs . . . between two successive academic years or terms, if the school year employee performed such services for any educational institution in the first such year or term and if there is *reasonable assurance* that he or she will perform such services for any educational institution in the 2nd such year or term. . . ." (Wis. Stat. section 108.04(17) (emphasis added).)

⁷ On a website, The Employment Development Department (EDD) offered the following interpretation of law that is consistent with its regulation in California Code of Regulations, title 22, section 1326-12 and DOL's guidance on how to address reasonable assurance during the recess period:

"Reasonable Assurance Offered During the Recess Period

A claimant who initially has been determined to not have a reasonable assurance, will subsequently become subject to the provisions of CUIC [California Unemployment Insurance Code] Section 1253.3 when the claimant is given such reasonable assurance.

When the claimant is initially found eligible for UI [unemployment insurance] payment during the recess period because there was no reasonable assurance to return to work with a school employer, and then is offered reasonable assurance while still in a recess period, an issue under CUIC Section 1253.3 exists. Continuing eligibility during the remainder of the recess period must be adjudicated at the time it becomes known the reasonable assurance to return to work now exists."

(http://www.edd.ca.gov/uibdg/Miscellaneous_MI_65.htm, section IV(G)(6).)

In the Wisconsin *Farrell* case, the professional school employees were laid off at the conclusion of the school year. (*Farrell v Labor & Industry Review Com.*, *supra*, 433 N.W.2d at 271.) Thereafter, on June 24, the school district sent each of them a letter signaling that the school district had decided to rehire them, but indicating that continued employment was contingent upon the authorization of funding. (*Ibid.*) On July 3, the school district sent each of them another letter indicating that the funding for their positions had been authorized and the contract was being finalized. (*Ibid.*) The June 24th letter was found not to provide reasonable assurance of future employment because it was conditioned on funding. (*Ibid.*) The July 3rd letter was found to constitute reasonable assurance of employment because "the necessary funding had been authorized and only the administrative execution of a written contract reflecting the agreement of the parties remained uncompleted." (*Ibid.*) Therefore, the claimants were not ineligible for benefits up to the date of July 3rd letter and were ineligible for benefits thereafter. (*Id.* at 271 and 273.)

In *Davis v Board of Review* (Ill. Ct. App. 1985) 477 N.E.2d 842, Illinois addressed the issue of the effect of a professional school employee receiving reasonable assurance during the summer break. The Illinois statute at issue is also substantially similar to California's statute in that it finds that a professional school employee "shall be ineligible for benefits . . . for any week . . . during a period between two successive academic years . . . if there is a contract or a *reasonable assurance* that the individual will perform service in any such capacity for any educational institution in the second of such academic years (or terms)." (820 ILCS 405/612 (emphasis added).)

In *Davis*, the claimant commenced the summer recess without reasonable assurance and, as a result, received unemployment benefits. (*Davis v Board of Review, supra*, 477 N.E.2d at 843.) On July 18, the claimant signed a contract to teach the following year and, therefore, had reasonable assurance as of that date. (*Ibid.*) The Appellate Court found the "for any week" language of the code to be "clear and unambiguous." (*Id.* at 844.) "A teacher's eligibility is determined on a weekly basis." (*Ibid.*) "During any week in which the teacher has a contract or reasonable assurance of employment during the upcoming school year, the teacher is not eligible to receive unemployment compensation." (*Ibid.*) Therefore, in *Davis*, as soon as the claimant received reasonable assurance for the next school year, he was no longer eligible for unemployment benefits for the remainder of the weeks of the summer recess. (See also, *Davis v. DC Dept. of Employment Services* (D.C. 1984) 481 A.2d 128, 130 (a Washington D.C. case finding the claimant eligible for unemployment benefits for the first part of the summer recess but ineligible for the weeks of the summer recess after the claimant received reasonable assurance).)

In addition, other states have considered this same issue and also found that eligibility for summer break benefits lasted only until the claimant was provided reasonable assurance and, thereafter, the claimant was ineligible for benefits for the remainder of the summer. (See Appeal Board (2008) No. 541974 [New York]⁸; *In re Veronica Padilla*, Empl. Sec. Comm'r (1988) Dec.2d 870 [Washington]⁹; and, *In re Debra L Eaton* (2001) Appeal Tribunal Decision 00 2212 [Alaska]¹⁰.

In the case before us, the evidence establishes that the claimant, a teacher, performed services for an educational institution in the 2011-2012 school year under code section 1253.3, subdivision (b) immediately before the summer break. Therefore, her eligibility for unemployment insurance benefits during the summer recess depends on whether the claimant had reasonable assurance of returning to work in the same or similar capacity in the next academic school year or term, which in this case was the fall semester of the 2012-2013 school year. The evidence clearly shows that, when the summer break commenced, the claimant did not have such reasonable assurance because the claimant received a written notice of layoff before the end of the 2011-2012 school year, which indicated that the district did not contemplate reemployment of the claimant. Thus, as of the time the claimant received the layoff notice, the claimant did not have a bona fide offer of employment for the following academic year as required by UIPL No. 04-87. Accordingly, at the time the summer break commenced, the claimant clearly did not have reasonable assurance that she would be working in the next successive academic year as she was told that she would be laid off before that time.

The employer, however, rescinded the layoff notice on June 29, 2012, and notified the claimant that she would be returning to her same position. The

⁸ In this New York Appeals Board case, the claimant started the summer break without reasonable assurance but, during the summer break in July, received a job offer as a full-time teacher in a different district. The Board found that the claimant had reasonable assurance upon receiving the job offer in July and was ineligible for benefits for the remainder of the summer break.

⁹ In this Washington State Precedent Decision, the claimant began the summer break with no reasonable assurance because her position had been eliminated. During the summer she obtained reasonable assurance because she received a full-time job offer at a different educational institution. The claimant was found eligible for summer break benefits up to the point she obtained the new job offer and, thereafter, ineligible for benefits for the remainder of the summer.

¹⁰ In this Alaskan Appeal Tribunal Decision, the claimant was laid off at the end of the school year, but the employer telephoned during the week ending August 19th to inform her that she was being recalled. The Appeals Tribunal found that the layoff resulted in a status of no assurance of returning to work but, as of the telephone call, the claimant had reasonable assurance and was ineligible for benefits beginning that week.

June 29th notice provided the claimant with an offer of employment and assignment which contemplated reemployment of the claimant without contingencies and thus clearly constituted reasonable assurance under code section 1253.3, subdivision (g), and *Russ v. California Unemployment Insurance Appeals Board* (1981) 125 Cal.App.3d 834.¹¹

Further, the notice met the DOL's definition of reasonable assurance in that it was a written agreement that the claimant "will perform services in the same or similar capacity" in the next academic year or term. (UIPL No. 04-87, sub. 3.) In addition, the notice met the three prong test that the DOL outlined for determining whether reasonable assurance exists because: (1) the notice provided an offer of employment in the next successive year or term; (2) the offer of reemployment had no contingencies such that only a possibility of work existed; and, (3) the economic terms and conditions of the claimant's position remained substantially the same. (See UIPL No. 04-87, sub. 4.) For all of these reasons, we find that the June 29th notice provided reasonable assurance to the claimant under code section 1253.3 as of June 29, 2012.

Thus, the issue arises as to the effect, for this claimant, who falls under code section 1253.3, subdivision (b), of receiving reasonable assurance on June 29, 2012, which was during the summer recess.

This case is similar to the *Farrell* and *Davis* cases because the claimant started the summer recess without reasonable assurance and the claimant obtained reasonable assurance at some point during the summer recess. As in *Farrell* and *Davis*, the "for any week" language of the California code section 1253.3, subdivision (b), is also clear and unambiguous that a professional employee's ineligibility under code section 1253.3, subdivision (b), must be determined on a weekly basis. Thus, a professional school employee is not ineligible for unemployment benefits for any week in which she does not have reasonable assurance and is ineligible for unemployment benefits for any week in which she does have reasonable assurance under code section 1253.3. Therefore, the claimant in the instant case is not ineligible for benefits from June 17, 2012 (her claim effective date) through June 30, 2012 (the week in which she received reasonable assurance) under code section 1253.3 because the claimant did not have reasonable assurance for part or all of each such weeks.

¹¹ As the facts of this case do not raise the issue, we are not deciding the outcome of a situation where the school employer rescinds a layoff notice after it became effective. Under Board precedent there can be only one separation (Precedent Decision P-B-472). If a layoff by a school employer is not rescinded prior to its effective date, then the Board may consider a separation analysis rather than a reasonable assurance analysis to be the appropriate approach.

As the claimant was not provided the notice of rescission of layoff until Friday, June 29, 2012, we must decide whether the ineligibility provision of code section 1253.3 takes effect on the week that reasonable assurance was given, i.e. the week that includes June 29, or the week beginning July 1, 2012, the first full week in which the claimant had reasonable assurance.

The unemployment compensation program must be construed liberally to effectuate the legislative objective of reducing the hardship of unemployment. (*Gibson v. Unemployment Insurance Appeals Board* (1973) 9 Cal.3d 494.) Nevertheless, the terms and conditions of eligibility, as spelled out by the Legislature, must be met.

The findings in other states support the position that the ineligibility provision applies to the first full week following the reasonable assurance.¹² In light of the public policy of reducing hardship, in promotion of fairness, and to be consistent with other states, we find that the just result is to apply the ineligibility of benefits to the first full week following the receipt of reasonable assurance. This provides for a liberal construction while still meeting the terms and conditions of eligibility as spelled out by code section 1253.3, subdivision (b).¹³ Accordingly, the claimant's school wages in the claimant's base period will be used in the computation of the claimant's unemployment benefits for the weeks beginning June 17, 2012 (her claim effective date) and ending June 30, 2012 (the week in which she received reasonable assurance) under code section 1253.3 because the claimant did not have reasonable assurance for part or all of each such weeks.

On appeal to this Board, the district argues that the claimant was not unemployed through June 30, 2012 because the contract did not end until

¹² See *Farrell v Labor & Industry Review Com.* (Wis. App. 1988) 433 N.W.2d 269, 271-73 (finding that the claimants received reasonable assurance on July 3, which is in week 27, thus, the claimants were ineligible for benefits beginning week 28); Appeal Board (2008) No. 541974 [New York] (finding that because the claimant received reasonable assurance on July 16, the exclusionary provision begins on the following Monday); *In re Veronica Padilla*, Empl. Sec. Comm'r (1988) Dec.2d 870 [Washington] (finding that because the claimant received reasonable assurance on June 19, she becomes ineligible for benefits in the week beginning June 21). But see *In re Debra L Eaton* (2001) Appeal Tribunal Decision 00 2212 [Alaska] (finding that the claimant received reasonable assurance in the week ending August 19th and is therefore ineligible for benefits that week.)

¹³ We note that the EDD determines that the ineligibility is to "be assessed effective the Sunday of the week in which the claimant was notified of the offer." (http://www.edd.ca.gov/uibdg/Miscellaneous_MI_65.htm, section IV(G)(6).) The claimant, however, did not have a full week of reasonable assurance until the week commencing July 1, 2012.

June 30, 2012.¹⁴ For the purposes of code section 1253.3, subdivision (b), the time period assessed is “any week which begins during the period between two successive years or terms.” The analysis of whether the claimant in this particular case had reasonable assurance and was ineligible for benefits under code section 1253.3 centers on whether the claimant was on a regular summer recess and whether the claimant had reasonable assurance for the next academic year or term. The evidence is clear that the claimant’s instructional duties for the school year ended on June 8, 2012, which was the last day of school for the preschool where she worked. Accordingly, the claimant commenced summer recess at that time. Even though the claimant’s contract continued to run, her work for the academic school year was completed and she commenced the summer recess composed of the weeks during the period between two successive years or terms under code section 1253.3.

Beginning July 1, 2012, the claimant had reasonable assurance. Whether the claimant was eligible for benefits during the three weeks beginning July 1, 2012 and ending July 21, 2012 is a question that cannot be resolved based upon the existing factual record, as explained in more detail below. We are therefore remanding the question of eligibility during those weeks to an administrative law judge for further consideration.

As of July 22, 2012, the claimant had reasonable assurance of returning to work in the next academic school year; therefore, the claimant is ineligible for benefits under code section 1253.3 beginning July 22, 2012 and ending August 25, 2012 (as the claimant returned to work in the week beginning August 26, 2012). Accordingly, the claimant’s school based wages cannot be used in the computation of the claimant’s unemployment benefits for the weeks beginning July 22, 2012 and ending August 25, 2012.

We now address the three weeks beginning July 1, 2012 and ending July 21, 2012.

In order to proceed with a hearing, an administrative law judge must have both subject matter and notice jurisdiction. The administrative law judge has jurisdiction over the subject matter arising out of appeals from department actions. (Precedent Decision P-B-494.)

¹⁴ To the extent that the employer is raising an issue as to whether the claimant was eligible or ineligible for benefits under code sections 1252 or 1279 due to wages received during a portion of the summer recess after her benefit year began, this decision will not address that issue. The EDD did not consider that issue in the appealed determination and, therefore, that issue is not before us in this proceeding. We focus only on the claimant’s eligibility under code section 1253.3.

California Code of Regulations, title 22, section 5102(c), provides, in part, that the Appeals Board on its own motion or upon application of a party may remand a case to an administrative law judge for the purpose of taking new or additional evidence.

Section 1334 of the Unemployment Insurance Code guarantees the parties the opportunity to participate in a fair hearing.

Section 1336 of the Unemployment Insurance Code provides, in part, that the Appeals Board may order the taking of additional evidence and may set aside the appealed decision.

Under California Code of Regulations, title 22, section 5062(d), each party has the following rights:

1. to review the case file;
2. to call and examine parties and witnesses;
3. to introduce exhibits;
4. to question opposing witnesses and parties on any matter relevant to the issues even though that matter was not covered in the direct examination;
5. to impeach any witness regardless of which party first called the witness to testify; and,
6. to rebut the evidence against it.

Here, the administrative law judge had both subject matter and notice jurisdiction to conduct a hearing regarding all issues under code section 1253.3. The unaddressed issue in this case is whether the claimant is ineligible for benefits under code section 1253.3, subdivision (b), during the three weeks ending July 21, 2012 because she may have had a reasonable expectation of summer school work due to being on a substitute list during her summer break. Because the administrative law judge found that the claimant did not have reasonable assurance due to the notice of layoff and was not ineligible for benefits for the entire summer recess, it was not necessary for the administrative law judge to consider this issue. Thus, the administrative law judge did not decide the conflict in the evidence regarding whether the claimant was on the substitute list or what effect, if any, the claimant's potential attachment to summer school would have on her ineligibility for benefits under code section 1253.3.

Once the reasonable assurance issue is resolved with a finding that the claimant had reasonable assurance for all or part of the summer break, the next step in a code section 1253.3 case is to consider whether an issue exists pertaining to the claimant's expectation of school-based summer employment and, if so, whether any such expectation of employment affects the claimant's ineligibility for benefits

under code section 1253.3.¹⁵ Because the facts are in dispute as to whether the claimant was on a substitute list for summer session work, because the administrative law judge did not have a reason to decide the factual dispute or the effect of the claimant's expectation of summer session work upon the claimant's ineligibility, and because the parties have not had an opportunity to appeal or present argument to the Board on this specific issue, we are not deciding the issue of the claimant's potential benefit ineligibility under code section 1253.3 during the summer school session. Instead, we remand that portion of the appeal to an administrative law judge.

DECISION

The decision of the administrative law judge is modified. The claimant is not ineligible under code section 1253.3, subdivision (b) for benefits beginning June 17, 2012 through June 30, 2012. Benefits are payable for that time period, provided the claimant is otherwise eligible. The claimant is ineligible under code section 1253.3 for benefits beginning July 22, 2012 and ending August 25, 2012. Benefits are denied pursuant to code section 1253.3 for that time period.¹⁶

That portion of the decision of the administrative law judge that deals with the three weeks beginning July 1, 2012 and ending July 21, 2012, is set aside. The case is remanded to an administrative law judge for a further hearing, if necessary, and decision on the merits of the issue of the claimant's potential ineligibility for benefits under code section 1253.3, subdivision (b) as to those three weeks. The hearing transcript/audio recording, exhibits, and other documents previously produced in the course of this proceeding shall remain a part of the record.

¹⁵ We note, for reference, that EDD considers a professional school employee who is on a substitute list and on call to substitute for a year-round school or for a summer school session during the summer break to not be in a recess period and, hence, not ineligible for benefits under code section 1253.3. (See http://www.edd.ca.gov/uibdg/Miscellaneous_MI_65.htm, section IV(F)(4) and (10).) Whether this represents the correct interpretation of the law is not being decided in this decision as it is not before us at this time.

¹⁶ The issue of whether the claimant has sufficient non-school wages to qualify for a valid claim is referred to the EDD for further consideration. This decision will not address that issue as EDD did not consider it in the appealed determination and, therefore, that issue is not before us in this proceeding. We focus only on the claimant's eligibility under code section 1253.3.



SAN DIEGO OFFICE OF APPEALS
3517 Camino Del Rio South, #100
SAN DIEGO CA 92108

(619) 521-3300

NAOMI R JORDAN
Claimant-Appellant

SAN DIEGO UNIFIED SCHOOL DISTRICT
Account No: [REDACTED]
Employer

Case No. **4683210**

Issue(s): 1253.3

Date Appeal Filed: 11/26/2012

EDD: 0250 BYB: 06/17/2012

Date and Place of Hearing(s):

(1) 01/09/2013 San Diego

Parties Appearing:

Claimant, Employer

DECISION

The decision in the above-captioned case appears on the following page(s).

The decision is final unless appealed within 20 calendar days from the date of mailing shown below. See the attached "Notice to Parties" for further information on how to file an appeal. If you are entitled to benefits and have a question regarding the payment of benefits, call EDD at 1-800-300-5616.

Shain B. Haug, Administrative Law Judge

FILE COPY

Date Mailed:

JAN 10 2013

Case No.: 4683210

CLT/PET: Naomi R. Jordan

Parties Appearing: Claimant, Employer

Parties Appearing by Written Statement: None

San Diego Office of Appeals

ALJ: Shain B. Haug

ISSUE STATEMENT

The claimant appealed a determination under Section 1253.3 of the Unemployment Insurance Code which held that benefits based on school wages in the base period of the claim were not payable to the claimant beginning June 23, 2012 six because the claimant's unemployed status was the result of an educational institution's recess, vacation or period between successive terms or years, and the claimant had reasonable assurance to returning to work. The issues in this matter are whether the claimant's unemployment was the result of an educational institution's recess, vacation or period between successive terms or years and, if so, whether the claimant had reasonable assurance to returning to work at the beginning of the following term.

FINDINGS OF FACT

On June 22, 2012 the claimant established a benefit claim with the effective date of June 17, 2012. The base period of that claim is January 1, 2011 to December 31, 2011. Wage credits are recorded in the base period as resulting from employment with a school or school district. The base period also includes significant wage credits resulting from employment with a nonschool employer.

During the 2011/2012 school year the claimant was employed by the San Diego Unified School District as a certificated teacher. In March 2012, during a time that the district was suffering financial issues, all certificated teachers were given a notice of the potential of layoffs.

On May 24, 2012 the claimant was given a notice that told her that she would be laid off effective June 30, 2012. At that time the district and the teachers' union were still in negotiations to resolve the issues as necessary to continue uninterrupted employment under the July 1, 2010 through June 30, 2013 contract.

The claimant's employment activity for the 2011/2012 school year ended with the end of classroom activity on June 8, 2012. At that time but for the layoff notice the claimant would have returned to work at the beginning of the 2012/2013 school year on August 26, 2012. On June 22, 2012 the claimant filed her June 17, 2012 unemployment insurance benefit claim.

On June 29, 2012 the school district rescinded all layoff notices and the claimant, among others, was reinstated to the assurance that her employment would resume at the beginning of the 2012/2013 school year and she was assured that she would remain on a contract assignment during the 2012/2013 school year at the same location she performed services during the 2011 2012 school year.

REASONS FOR DECISION

Section 1253.3(b) of the Unemployment Insurance Code provides that unemployment insurance benefits based on service performed in the employ of a nonprofit organization, or of any entity as defined by Section 605 [of the Unemployment Insurance Code] in an instructional, research or principal administrative capacity shall not be 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.

Section 1253.3(g) of the Unemployment Insurance Code provides that "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."

In Cervisi v. California Unemployment Insurance Appeals Board (1989) 256 Cal. Rptr. 142, the faculty assignment form given hourly instructors in a community college stated that "employment is contingent upon adequate class enrollment." The Court of Appeal held that the "unambiguous language" of section 1253.3(g) of the code supported the findings of the trial court that the assignments in question were not a "reasonable assurance" of employment.

In the present case, the question here presented is that of whether the uncertainties of return to work, and thereby the lack of reasonable assurance of return to work as prevailed until June 29, 2012, can be remedied retroactively by a change of circumstances that establishes reasonable assurance beginning only after the end of the school year and beginning only after the claimant has established a benefit claim.

While not applicable to certificated employees the provisions of Section 1253.3(i) are instructive.

Section 1253.3(i) of the code provides that no later than 30 days before the end of a "first academic year or term," public school employers shall provide a written statement to employees not engaged in instructional, research, or principal administrative tasks, indicating:

- (1) Whether or not there is reasonable assurance of reemployment.
- (2) Whether or not it is stated that the individual has no reasonable assurance of reemployment, that the individual should file a claim for benefits at the close of the academic year or term.
- (3) If it is stated that there is a reasonable assurance of reemployment, that the Employment Development Department not the employer will determine if the employee is entitled to unemployment insurance benefits.
- (4) If it is stated that there is reasonable assurance of reemployment, that the employee is entitled to retroactive benefits if not offered an opportunity to perform services in the second academic year or term, if he or she is otherwise eligible and filed a claim for each week for which benefits are claimed, and if the claim for retroactive benefits is made no later than 30 days following commencement of the second academic year or term.

In the present case, this section makes provision for the retroactive allowance of benefits if the reasonable assurance that existed at the end of the school year does not materialize at the beginning of the next school year. One must presume that the statute was designed to prevent a school district from changing its position after the fact to gain an advantage over its employees.

Conversely, would it be fair to begin the vacation period with lack of reasonable insurance and to then establish reasonable assurance only shortly before the next school year began? Such a course of conduct would retroactively deny a claimant the benefit of the base period wage credits arising from school employment that were used for benefits over the summer months and would thereby subject to that claimant to an overpayment assessment.

The only reasonable interpretation of the statutes is that a lack of reasonable assurance status as of the time the school year ends then prevails throughout the vacation, recess or period between terms notwithstanding subsequent changes in the employer's circumstances. On that basis the claimant did not have reasonable assurance of return to work at the beginning of the 2012/2013 school year.

It is concluded that the claimant's benefits are not subject to the provisions of Section 1253.3 beginning in June 17, 2012 and that benefits are payable during the school vacation period of June 10, 2012 through August 25, 2012 based on all wage credits in the base period the claim including wage credits resulting from school employment.

An anomaly not addressed in the determination needs to be brought to the attention of the Employment Development Department. The claimant had substantial wage credits in the base period the claim as a result of nonschool employment with the City of San Diego. Benefits should be paid based on these wage credits even if the provisions of section 1253.3 applied to the computation of claimant's benefits. In that regard it is noted that the Employment Development Department issued an overpayment assessment to the claimant for benefits paid for the week of June 30, 2012 without first considering the amount of benefit to which she was entitled based on the nonschool wage credits.

DECISION

The determination under Section 1253.3 is reversed. The claimant's benefits are not subject to the provisions of section 1253.3 beginning in June 17, 2012 and benefits are payable during the school vacation period of June 10, 2012 through August 25, 2012 based on all wage credits in the base period the claim including wage credits resulting from school employment.

SD:sh



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

ARVIE J MORITZ
Claimant-Appellant

DHL EXPRESS
c/o UC EXPRESS
Account No.: [REDACTED]
Employer

Case No.: **AO-314175**

OA Decision No.: 4559049

EDD: 0250 BYB: 11/13/2013

DECISION

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

ROY ASHBURN

MICHAEL ALLEN

ROBERT DRESSER

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.

Date Mailed:

Nov 21, 2013

Case Nos.: AO-314175, AO-314177, AO-314178, AO-314179
Claimant: ARVIE J MORITZ

OP

The claimant appealed from the portions of the decisions of the administrative law judge that held:

1. the claimant was disqualified for benefits under section 1256 of the Unemployment Insurance Code¹;
2. the claimant was overpaid benefits and liable for repayment of an overpayment in the amount of \$11,700 under code section 1375;
3. the claimant was overpaid benefits and liable for repayment of an overpayment in the amount of \$5,850 under code section 1375; and,
4. the claimant was overpaid benefits and liable for repayment of an overpayment in the amount of \$9,000 under code section 1375.

The administrative law judge inadvertently failed to mention in her decision that one of the issues in the matter was a department ruling that held the employer's reserve account subject to benefit charges; and failed to address the issue of whether the employer's reserve account should be subject to charges.

Pursuant to California Code of Regulations, title 22, section 5100(b), these partial appeals are consolidated for consideration and decision.

ISSUE STATEMENT

The issues to be decided in these cases are:

1. Does the Employment Development Department (hereinafter referred to as the department) have the authority to issue the employer a determination and ruling under sections 1030 and 1327 where:
 - a. the department's disqualification of the claimant under section 1256 is based on information provided by the claimant's employer beyond the time limits provided by sections 1030 and 1327;

¹ All section references are to the Unemployment Insurance Code unless otherwise noted.

- b. there is no evidence that the department made a finding of good cause to extend the time for the employer to respond to the notice that the claimant filed a claim for benefits (sections 1030 and 1327); and,
 - c. there is no evidence that the claimant engaged in fraud, misrepresentation, or willful nondisclosure when she filed her claim for unemployment benefits (sections 1257(a) and 1332.5)?
2. Does the department have the authority to reconsider a claimant's eligibility for benefits under section 1256 where:
- a. the department's disqualification of the claimant is based on information provided by the claimant's employer beyond the time limits provided by sections 1030 and 1327;
 - b. there is no evidence that the department made a finding of good cause to extend the time for the employer to respond to the notice that the claimant filed a claim for benefits (sections 1030 and 1327); and,
 - c. there is no evidence that the claimant engaged in fraud, misrepresentation, or willful nondisclosure when she filed her claim for unemployment benefits (sections 1257(a) and 1332.5)?
3. Is the claimant liable for an overpayment for those benefits paid to the claimant prior to the employer's untimely response to the notice issued to the employer pursuant to sections 1030 and 1327, when there has been no showing that the department had the authority to reconsider the claimant's eligibility for unemployment insurance benefits?

FINDINGS OF FACT

We set forth only those facts necessary for resolution of this matter.

The claimant filed a claim for unemployment insurance benefits on May 2, 2011, by completing the on-line application for benefits, known as "E-Apply for UI" on the department's website. The claimant selected "Laid Off" as the reason she was no longer working for her most recent employer, DHL Express. On May 5, 2011, the department mailed the claimant a Notice of Unemployment Insurance Award (DE429Z), advising the claimant that she established a claim for unemployment insurance benefits with a weekly benefit amount of \$450.

The claimant's employer, DHL Express, was both the claimant's last employer and a base period employer. The department sent this employer two notices advising the employer that the claimant filed a claim for benefits – a Notice of Unemployment Claim Filed (DE1101CZ)² and a Notice of Wages Used for Unemployment Insurance (UI) Claim (DE1545).³ Both of these notices provided the employer with an opportunity to explain the reason the claimant separated from her employment. Both of these notices set forth time limitations within which the employer was to respond.

The department mailed the employer the Notice of UI Claim Filed on May 5, 2011. This notice advised the employer that “the law requires an employer to submit any facts in his/her possession which may affect a claimant's eligibility for benefits,” and to respond as completely as possible because the facts in the response will be used in determining the claimant's eligibility for benefits. The Notice of UI Claim Filed further advised the employer that the time limit for replying is ten days from the mail date on the notice, and that if the employer is mailing his/her response late, the employer must explain the reasons for the delay as the time limit may be extended only for good cause.

The same notice also referenced to code section 1327 and informed the employer that the ten-day response period may be extended for good cause or, if the employer acquires knowledge of facts that may affect the claimant's eligibility after the ten-day period has expired and those facts could not reasonably have been known within the ten-day response period, the employer may provide those facts within ten days of acquiring them. This second ten-day period may also be extended for good cause. The employer had until May 16, 2011, to timely respond to the Notice of UI Claim Filed. According to the record, the employer did not respond to this notice.

Similarly, the Notice of Wages Used for UI Claim, mailed to the employer on May 25, 2011, advised the employer that the claimant had received unemployment insurance benefits and that if the employer wanted a ruling, the employer would need to supply the department with information regarding the separation. The employer had fifteen days from the date the notice was sent to timely respond to this notice. If the employer did not respond within fifteen days, the time limit could have been extended, provided the employer had shown good cause for the untimely response. The employer had until June 9, 2011, to timely respond to the Notice of Wages Used for UI Claim. According to the record, the employer did not respond.

² Hereinafter referred to as the Notice of UI Claim Filed.

³ Hereinafter referred to as the Notice of Wages Used for UI Claim.

On May 23, 2011, the department mailed the claimant her first benefit check in the amount of \$450 for the week ending May 14, 2011. (The week ending May 7, 2011 was the claimant's waiting period week.) After exhausting all regular unemployment insurance benefits, the claimant received federal extended benefits (including EUC and EUX) beginning on or about November 6, 2011. The claimant received regular unemployment benefits and extended unemployment benefits from May 8, 2011 through June 23, 2012, in the total amount of \$26,550.

In a department claim note dated July 2, 2012, fourteen months after the claimant filed her initial claim for unemployment insurance benefits and shortly before she would be paid benefits under another extended benefit program (EUY), the department recorded that DHL Express, her last and base period employer, through its agent TALX, informed the department that the claimant quit to retire. The record does not reflect why the employer waited fourteen months after receiving the first notices to respond with the requested information. The record does not show that any Notice of UI Claim Filed or Notice of Wages Used for UI Claim was sent to the employer, other than those issued in 2011.

If the employer was responding to either the Notice of UI Claim Filed or the Notice of Wages Used for UI Claim sent to the employer in 2011, the record does not reflect that the employer gave any reason to justify its almost fourteen-month delay.

On July 13, 2012, within two weeks of the department receiving the information from the employer's representative that the claimant quit to retire, the department conducted a telephone interview with the employer. According to the department's Record of Claim Status Interview, the employer's agent informed the department interviewer that the claimant sent the employer an email on March 21, 2011, wherein the claimant advised the employer that she was retiring and that her last day on the job would be April 22, 2011.

The department interviewer did not obtain any information from the employer regarding the employer's receipt of the Notice of UI Claim Filed and the Notice of Wages Used for UI Claim, sent to the employer shortly after the claim was filed in 2011, or why the employer did not timely respond to these notices, and waited fourteen months to provide this information.

Based on the information the department obtained during the July 13, 2012 interview, the department reconsidered the claimant's eligibility for benefits. The department issued a notice of determination and ruling on July 25, 2012, wherein the department found the claimant disqualified for benefits under code section 1256; relieved the employer's reserve account of benefit charges; and

disqualified the claimant under section 1257(a) because the department found she made a false statement or willfully withheld material information when claiming benefits. The department also issued three separate notices of overpayment on July 31, 2012, seeking reimbursement for fourteen months of benefits paid to the claimant on her regular unemployment claim as well as her two extended benefit claims. It is these department notices from which the claimant appealed.

The claimant and the employer were notified of the hearing on these issues before the administrative law judge. Only the claimant appeared at the hearing.

In related Case No. AO-314176 (FO Case No. 4559050), the claimant appealed from the decision of the administrative law judge that found the claimant did not make a willful false statement when she filed her claim. In that matter, the administrative law judge found that while the claimant was at fault for not providing the correct reason for her separation from her work, the claimant did not commit fraud, engage in misrepresentation, or willfully fail to disclose material information when she filed her claim for benefits, and was not disqualified for benefits under code section 1257(a). Neither the employer nor the department appealed this decision of the administrative law judge. Because the decision of the administrative law judge was favorable to the claimant, there was no disputed issue for the claimant to appeal. We dismissed the claimant's appeal in Case No. AO-314176 finding the claimant received a favorable decision from the administrative law judge and there is no further relief to be provided by the Appeals Board. The decision of the administrative law judge that held the claimant not disqualified for benefits under code section 1257(a) stands as issued.

REASONS FOR DECISION

A. THE EFFECT OF THE ADMINISTRATIVE LAW JUDGE DECISION FINDING NO FRAUD, MISREPRESENTATION OR WILLFUL NONDISCLOSURE, ON THE DEPARTMENT'S ABILITY TO RECONSIDER THE DETERMINATION AND RULING.

Any provision of the code which prescribes time limits within which the department may reconsider any determination, ruling or computation, or any provision that otherwise restricts or prevents such reconsideration, does not apply in any case of fraud, misrepresentation or willful nondisclosure. (Unemployment Insurance Code, section 1332.5.)

As discussed in the sections that follow, there are statutory provisions that prescribe time limits within which the department may reconsider a determination

and a ruling. Such time limits would not apply, however, in those cases where either the claimant or the employer has been found to have engaged in fraud, misrepresentation, or willful nondisclosure.

The decision of the administrative law judge found the claimant did not engage in fraud, misrepresentation, or willful nondisclosure when claiming benefits.⁴ Since neither the employer nor the department appealed from that decision, the administrative law judge's finding stands as issued.

Having found that the claimant did not engage in fraud, misrepresentation or willful nondisclosure, and is not disqualified for benefits under section 1257(a), the department was bound by the statutory time limits within which the department may reconsider the claimant's eligibility for benefits under section 1256 and the charges to the employer's reserve account under sections 1030 and 1032.

B. THE DEPARTMENT'S AUTHORITY TO ISSUE THE EMPLOYER A NOTICE OF DETERMINATION/RULING.

An individual is disqualified for benefits if the individual left the most recent work voluntarily without good cause or the individual was discharged for misconduct connected with the most recent work. (Unemployment Insurance Code, section 1256.)

An employer's reserve account may be relieved of benefit charges if the claimant left employment voluntarily without good cause or was discharged for misconduct. (Unemployment Insurance Code, sections 1030 and 1032.)

Section 1327 of the Unemployment Insurance Code requires the department to give notice of the filing of a new or additional claim to the employer by whom the claimant was last employed immediately preceding the filing of the claim unless:

- (1) the additional claim is the result of the filing of a partial claim;
- (2) no subsequent employer has been designated as the last employer; and,
- (3) there is no separation issue.

The claimant's most recent employer must submit, within ten days after the mailing of notice of a new or additional claim, any facts then known which may affect the claimant's eligibility for benefits, including the circumstances of the

⁴ See related AO Case No. 314176.

claimant's separation from employment. The ten-day period may be extended for good cause. (Unemployment Insurance Code, sections 1030(a) and 1327.)

The department is required to promptly notify each of the claimant's base period employers of its computation of the claimant's benefits after the payment of the first weekly benefit. (Unemployment Insurance Code, section 1329.)

A base period employer must submit within 15 days of a notice of computation any facts then known, and not previously required to be submitted as a most recent employer, regarding the claimant's loss of employment. The 15-day period may be extended for good cause. (Unemployment Insurance Code, sections 1030(b) and 1331.)

If after the time periods prescribed in sections 1327 and 1331, the employer acquires knowledge of facts that may affect the eligibility of the claimant and those facts could not reasonably have been known within those periods of time, the employer shall, within ten days of acquiring the knowledge, submit the facts to the department. That ten-day period may also be extended for good cause. (Unemployment Insurance Code sections 1327 and 1331.)

An employer is entitled to a ruling only if it timely responds to the notice of claim with information regarding the termination of the claimant's employment. The employer is entitled to a determination if it timely submits any information relevant to the claimant's eligibility for benefits. (Precedent Decision P-B-432.)

Where an employer, without good cause, fails to timely respond to the first notice of claim filed, the employer is not entitled to a ruling or a determination. (Precedent Ruling P-R-363; Precedent Decision P-B-499.)

An employer who, without good cause, fails to respond properly to the first notice of claim it was mailed is not entitled to a ruling or determination notwithstanding a timely response to later notices. (Precedent Decisions P-R-363, P-R-371, P-R-372 and P-B-499.)

In this matter, the employer was both the last employer and a base period employer. Consequently, the department was required to send, and did send, the employer two notices shortly after the claimant opened her claim for unemployment insurance benefits. The first notice sent to the employer was the Notice of UI Claim Filed on May 5, 2011. A subsequent notice, the Notice of Wages Used for UI Claim, was sent to the employer on May 25, 2011.

Pursuant to sections 1030(a) and 1327, the employer was to respond to the Notice of UI Claim Filed within ten days, or by May 15, 2011; and was to respond

to the Notice of Wages Used for UI Claim within the statutorily required 15-day days, or June 11, 2011. There is no evidence that the employer availed itself of these two opportunities in May and June of 2011 to timely provide the department with information pertaining to the claimant's separation. As a result, the department found the claimant eligible for unemployment insurance benefits, and charged the employer's reserve account accordingly.

Even though these notices provided the employer with two opportunities to timely provide the department with information regarding the claimant's separation – information which would impact both the department's determination of the claimant's eligibility and the department's ruling on the charging of the employer's reserve account – the employer did not provide the department with information regarding the claimant's separation until June or July of 2012, approximately fourteen months after benefits had commenced. While code section 1327 provides the employer with additional time to respond to the notices the department sent in 2011, the requirements are specific – the employer must show good cause for the untimely response or that the information provided was “newly acquired.”

The information the employer reported to the department in 2012 was contained in an email the claimant sent her employer one month prior to her separation in 2011. There is no evidence in the record establishing that the employer provided the department with any reason for this late response to the notices, and thus no showing the employer had “good cause” for the employer's late response. Nor is there any evidence that this email the claimant sent to the employer in 2011 was “newly acquired” information.

Moreover, there is no evidence that the department made a finding that the employer timely responded, that the employer had good cause for its untimely response, or that the employer provided newly acquired information. Consequently, the elements necessary to allow additional time for the employer to respond to the Notice of UI Claim Filed under code section 1327 have not been shown, and there is no basis for the department to extend the time for the employer to respond under code section 1327, and therefore no statutory support for the department's redetermination of the claimant's eligibility under section 1256 and the issuance of the determination and ruling in 2012.

Even assuming the department accepted the late filed information based on its belief that the claimant engaged in fraud, misrepresentation, or willful nondisclosure, once the administrative law judge decided otherwise, the untimely submitted information could only be relied upon if the employer had established good cause for its untimely response to the Notice of UI Claim Filed, or its receipt of newly acquired evidence. Thus, in the absence of any evidence that the

employer had good cause for its untimely response to the Notice of UI Claim Filed, the department does not have the authority to issue an unfavorable determination as to the claimant's eligibility and a favorable ruling that the employer's reserve account was not subject to charges, and the notice of determination and ruling must be set aside.

Accordingly, in Case No. AO-314175, we reverse the portion of the decision of the administrative law judge finding the claimant disqualified for benefits under code section 1256. The department's notice of determination and ruling is set aside.

In an appeal from a decision of an administrative law judge, the Board shall consider only those issues in a department action which were appealed, petitioned, or noticed by the Office of Appeals, related issues properly considered by the administrative law judge, related procedural issues, or appellate procedural issues. (California Code of Regulations, title 22, section 5101.) The Board may refer to the Employment Development Department or remand to an administrative law judge for appropriate action any issues raised for the first time in the appeal. The Board shall not consider any substantive issues which have not been appealed. (California Code of Regulations, title 22, section 5101.)

We set aside the decision of the administrative law judge and the underlying notice of determination and ruling because, as found above, once it was found that there was no fraud, misrepresentation or willful omission of material information by the claimant, there was no evidence in the record to support the conclusion that the department had authority to issue the notice of determination and ruling to the employer in this case. However, while the issues of fraud, misrepresentation and willful omission were fully litigated in Case No. AO 314176, the record does not reflect that the department specifically considered or addressed the issues of whether the employer timely responded to the Notice of Claim Filed, the employer had good cause for any delay in responding to such notice or the employer's correspondence to the department in June or July 2012 was newly acquired evidence. The notice of hearing did not list these issues for consideration at the hearing and the issues were not fully litigated by the parties. Rather, these issues have been considered by the Appeals Board for the first time. As such, we find it necessary to refer these issues to the department for its consideration.

The following issues are referred to the department for its consideration and issuance of any appealable notice(s) to the employer the department may deem appropriate: 1) whether the employer timely responded to the Notice of Unemployment Claim Filed pursuant to code sections 1030 and 1327; and 2) if the employer did not timely respond, a) whether the employer had good cause

for its untimely response; b) the reasons that support a finding of good cause for the employer's untimely response; and c) whether the employer's untimely response was based upon newly acquired information.

C. THE AUTHORITY OF THE DEPARTMENT TO RECONSIDER THE CLAIMANT'S ELIGIBILITY FOR BENEFITS.

An individual is disqualified for benefits if the individual left the most recent work voluntarily without good cause or the individual was discharged for misconduct connected with the most recent work. (Unemployment Insurance Code, section 1256.)

An individual is presumed not to have voluntarily left his or her work without good cause unless his or her employer has given written notice to the contrary to the department as provided in section 1327 of the code, setting forth facts sufficient to overcome the presumption. This presumption is rebuttable. (Unemployment Insurance Code, section 1256.)

If an employer fails to submit a timely protest under section 1327 of the code, or the protest fails to set forth sufficient facts, the burden is on the employer or the Employment Development Department to prove that the claimant is disqualified for benefits under section 1256 of the code. (*Rabago v. Unemployment Insurance Appeals Board* (1978) 84 Cal.App.3d 200; *O'Connell v. Unemployment Insurance Appeals Board* (1983) 149 Cal.App.3d 54.)

Section 1332(b) of the Unemployment Insurance Code provides in part:

"(b) The department may for good cause reconsider any determination within 15 days after an appeal to an administrative law judge is filed. If no appeal is filed, the department may for good cause reconsider any determination within 20 days after mailing or personal service of the notice of determination. The department may, if a claimant has not filed an appeal to an administrative law judge from any determination which finds that a claimant is ineligible or disqualified, or if an appeal has been filed but is either withdrawn or dismissed, for good cause also reconsider the determination during the benefit year or extended duration period or extended benefit period to which the determination relates. The department shall give notice of any reconsidered determination to the claimant and any employer or employing unit which received notice under sections 1328 and 1331 and the claimant or employer may appeal therefrom in the manner prescribed in section 1328"

The time limitations set forth in section 1332(b) of the code apply to a "silent" or "unwritten" determination by the department of a claimant's eligibility for benefits under code section 1256. (Precedent Decision P-B-499.)

The department initially found the claimant separated from her work under qualifying reasons under code section 1256. The department did not send a written notice of determination to the claimant finding the claimant eligible for benefits. Rather, the department notified the claimant of its finding that she was eligible for unemployment benefits by virtue of the first benefit payment to the claimant on May 23, 2011. Thus, the department's payment of benefits to the claimant is considered a "silent" determination finding the claimant eligible for unemployment benefits.

Having initially determined the claimant eligible for benefits, the department is bound by the time limitations as set forth in code sections 1332(b) within which the department may reconsider its initial finding that the claimant is eligible for benefits. Section 1332(b) allows the department, for good cause, to reconsider any determination within twenty days after mailing or personal service of the notice of determination in cases where no appeal was filed. As the claimant's first benefit check was mailed on May 23, 2011, the department had until June 12, 2011 to reconsider the claimant's eligibility for benefits. Since the department did not reconsider the claimant's eligibility until fourteen months after the silent determination, the department was clearly beyond this twenty-day period.

The department may reconsider a favorable determination beyond the twenty-day period under limited circumstances.

The department may reconsider a favorable determination beyond that twenty-day period in those cases where there has been a change in the law affecting a claimant's continuing eligibility for unemployment benefits. (See Precedent Decision P-B-499.) In this matter, there has been no change in the law affecting this claimant's continuing eligibility for unemployment insurance benefits related to the issues under appeal.

The department may also reconsider a favorable determination beyond that twenty-day period in those cases involving fraud, misrepresentation or willful nondisclosure under section 1332.5. As discussed in section A above, the administrative law judge found the claimant did not engage in fraud, misrepresentation or willful nondisclosure when she filed her claim for unemployment benefits. Thus, the department did not have the authority under section 1332.5 to reconsider the favorable determination beyond the twenty-day time limitation set forth in section 1332(b).

The department is, therefore, limited to reconsidering the claimant's eligibility within twenty days from the mailing of the department determination. The record does not show the employer timely responded to the department notices, which timely response would have given the department the opportunity to reconsider the claimant's eligibility for benefits. It is important to note that had the employer timely responded to the Notice of Unemployment Claim Filed mailed to the employer on May 5, 2011, the department would have had sufficient time to evaluate the claimant's eligibility not only before the first benefit payment was issued, but also within twenty days of the issuance of the silent determination.⁵ Additionally, if the employer responded untimely with good cause, prior to the expiration of the twenty-day period after the silent determination was issued, the department may have had the ability to reconsider the silent determination.⁶

Accordingly, in Case No. AO-314175, the portion of the decision of the administrative law judge finding the claimant disqualified for benefits under section 1256 is set aside, and the department's notice of determination/ruling issued on July 25, 2012 is set aside. The "silent" determination issued on May 23, 2011 finding the claimant eligible for benefits under code section 1256 stands as issued.

D. THE NOTICES OF OVERPAYMENT

Any person who is overpaid unemployment insurance benefits is liable for repayment unless the overpayment was not due to fraud, misrepresentation or wilful nondisclosure, was received without fault, and its recovery would be against equity and good conscience. (Unemployment Insurance Code, section 1375(a).)

The notices of overpayment resulted from the department's notice of determination that found the claimant disqualified for benefits under 1256. Since we reverse the portion of the decision of the administrative law judge that found the claimant disqualified for benefits under code section 1256, and hold that the silent determination that found the claimant eligible for benefits under section 1256 stands as issued, the claimant remains eligible for the benefits that are the subject of the overpayments. Thus, the appealed portion of the decisions of the

⁵ The employer had ten days, or until May 16, 2011 to respond. The information the employer provided to the department in July 2012 was available to the employer on May 5, 2011. Had the employer timely responded within ten days as required, the department would have had the ability to consider the employer's information not only before the department issued the first benefit check on May 23, 2011, but also within the twenty-day period within which the department may reconsider the silent determination.

⁶ The twenty day period within which the department could reconsider the silent determination expired on June 13, 2011. The employer would have had at least an additional two weeks to provide this information to the department, along with a showing that the employer had good cause for its untimely response.

administrative law judge in Case Nos. AO-314177, AO-314178, and AO-314179 finding the claimant liable for the overpayment pursuant to code section 1375 are reversed, and the notices of overpayment are cancelled.

DECISION

In Case No. AO-314175, the portion of the decision of the administrative law judge pertaining to the determination finding the claimant disqualified for benefits under code section 1256 is reversed, and the portion of the decision of the administrative law judge pertaining to the employer's reserve account being relieved of benefit charges is set aside. The department's notice of determination/ruling issued on July 25, 2012 is set aside. The department's original "silent" determination issued on May 23, 2011 finding the claimant eligible for benefits under section 1256 remains in effect. The issue of whether the employer timely responded to the Notice of Unemployment Claim Filed, whether the employer had good cause for its untimely response, or whether the evidence the employer provided to the department was newly acquired, is referred to the department for further consideration and issuance of any notices to the employer it deems appropriate.

In Case Nos. AO-314177, AO-314178, and AO-314179, the appealed portions of the decisions of the administrative law judge are reversed, and the notices of overpayment are cancelled.



INGLEWOOD OFFICE OF APPEALS
9800 South La Cienega Blvd - Ste 901
INGLEWOOD CA 90301

(310) 337-4302

ARVIE J MORITZ
Claimant-Appellant

DHL EXPRESS
c/o UC EXPRESS
Account No. [REDACTED]
Employer

Case No. 4559049

Issue(s): 1030/32, 1256

Date Appeal Filed: 08/10/2012

EDD: 0250 BYB: 05/01/2011

Date and Place of Hearing(s):
(1) 11/02/2012 Inglewood

Parties Appearing:
Claimant

DECISION

The decision in the above-captioned case appears on the following page(s).

The decision is final unless appealed within 20 calendar days from the date of mailing shown below. See the attached "Notice to Parties" for further information on how to file an appeal. If you are entitled to benefits and have a question regarding the payment of benefits, call EDD at 1-800-300-5616.

Melissa Billet, Administrative Law Judge

FILE COPY

Date Mailed:

NOV 19 2012

Case No.: 4559049

CLT/PET: Arvie Moritz

Parties Appearing: Claimant

Parties Appearing by Written Statement: None

Inglewood Office of Appeals

ALJ: Melissa Billet

ISSUE STATEMENT

The claimant appealed from a determination disqualifying her for unemployment benefits under Unemployment Insurance Code section 1256. The issue in this case is whether the claimant voluntarily left the most recent employment without good cause.

FINDINGS OF FACT

The claimant most recently worked for the employer, DHL Express, as an ocean pricing analyst for 8 years. Her final rate of pay was \$40 per hour. The claimant last worked on April 22, 2011, when she voluntarily quit under the following circumstances.

In December of 2010, the employer advised the claimant and others that their division would be disbanded and reorganized out of state. No date for the change was given. The claimant continued to perform her regular duties at her usual rate of pay. In January and April of 2011, the claimant asked the employer for clarification regarding the status of her division. She was told things were still in transition and was not given any further information. In the interim, the claimant spoke with her supervisor about jobs in other cities. She was told that everything had been filled and there were no openings. The claimant assumed her job would eventually be eliminated. She felt overwhelmed and panicked about her finances, including the upcoming lease renewal on her apartment. She decided to move in her with a daughter in Northern California. The claimant informed the employer that she was retiring effective April 22, 2011.

REASONS FOR DECISION

An individual is disqualified for benefits if he or she left his or her most recent work voluntarily without good cause. (Unemployment Insurance Code, section 1256.)

There is good cause for voluntarily leaving work where the facts disclose a real, substantial, and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action. (Precedent Decision P-B-27.)

In Precedent Decision P-B-97 the claimant retired voluntarily. The appeals board found that the claimant's action was not that of a person genuinely desirous of retaining employment and held the claimant voluntarily left employment without good cause.

In Precedent Decision P-B-479 the claimant accepted the employer's financial incentives for early retirement. Although the claimant was concerned about future restructuring, there was no immediate threat he would be laid off or reassigned. The appeals board held that the monetary incentives alone were not good cause for leaving. As the claimant had provided no other compelling reasons for retiring, the board held he left work without good cause.

In this case, the claimant retired four months after being notified that her department would eventually be reorganized. At the time she retired, she was still performing her regular duties and had not been given any date on which her job would be altered or eliminated. It is understandable that the claimant was concerned for her future job security. However, inasmuch as the employer had taken no specific action other than to mention a reorganization which would take place at an unknown time in the future, there was no immediate threat of a lay-off or reassignment. The claimant could have continued to work and earn her usual salary until the time came, if at all, when the employer actually began the transition mentioned months earlier. Instead, the claimant simply assumed her job would be eliminated and on that assumption elected to retire. Under these circumstances, the claimant has not shown that she had a real, substantial and compelling reason for leaving employment.

It is therefore found that the claimant left her most recent work voluntarily and without good cause. She is disqualified for benefits under code section 1256.

DECISION

The determination of the department is affirmed. The claimant is disqualified for benefits under Unemployment Insurance Code section 1256. Benefits are denied.

ING:mb



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

ARVIE J MORITZ
Claimant-Appellant

DHL EXPRESS
c/o UC EXPRESS
Account No.: [REDACTED]
Employer

Case No.: **AO-314176**

OA Decision No.: 4559050

EDD: 0250 BYB: 05/01/2011

DECISION

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

ROY ASHBURN

MICHAEL ALLEN

ROBERT DRESSER

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.

Date Mailed:

Nov 21, 2013

Case No.: AO-314176
Claimant: ARVIE J MORITZ

The claimant appealed from the decision of an administrative law judge that held the claimant not eligible for unemployment benefits under code section 1257(a) of the Unemployment Insurance Code.

In an appeal faxed December 4, 2012, the claimant appealed from the administrative law judge's decision which ruled in her favor.

Section 1336 of the Unemployment Insurance Code provides that the Director of Employment Development Department or any party to a decision by an administrative law judge may appeal to the Appeals Board from the administrative law judge's decision.

In California Code of Regulations, title 22, section 5000(k) defines "Board appeal" as a request for review of an adverse decision or order of an administrative law judge by the Board.

A review of the case record reveals that there is no disputed issue to be decided under code section 1257(a), since the administrative law judge found the claimant to be not ineligible for unemployment insurance benefits under that code section. Therefore, the appeal may not be considered.

The appeal is hereby dismissed.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD



INGLEWOOD OFFICE OF APPEALS
9800 South La Cienega Blvd - Ste 901
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(310) 337-4302

ARVIE J MORITZ
Claimant-Appellant

DHL EXPRESS
c/o UC EXPRESS
Account No: [REDACTED]
Employer

Case No. 4559050

Issue(s): 1257(a)

Date Appeal Filed: 08/10/2012

EDD: 0250 BYB: 05/01/2011

Date and Place of Hearing(s):
(1) 11/02/2012 Inglewood

Parties Appearing:
Claimant

DECISION

The decision in the above-captioned case appears on the following page(s).

The decision is final unless appealed within 20 calendar days from the date of mailing shown below. See the attached "Notice to Parties" for further information on how to file an appeal. If you are entitled to benefits and have a question regarding the payment of benefits, call EDD at 1-800-300-5616.

Melissa Billet, Administrative Law Judge

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Date Mailed: NOV 19 2012

Case No.: 4559050

CLT/PET: Arvie Moritz

Parties Appearing: Claimant

Parties Appearing by Written Statement: None

Inglewood Office of Appeals

ALJ: Melissa Billet

ISSUE STATEMENT

The claimant appealed from a department notice that held her disqualified for benefits under Unemployment Insurance Code section 1257(a) for 5 weeks in which she would otherwise be eligible for benefits. The issue in this case is whether the claimant willfully made a false statement or representation, or willfully withheld a material fact, when claiming benefits.

FINDINGS OF FACT

The claimant filed a claim for benefits which began on May 1, 2011 with a weekly benefit of \$450.

The claimant voluntarily quit her job with DHL after learning that her department would eventually be reorganized. When filing her claim, the claimant reported that she had been laid off when her job was eliminated.

REASONS FOR DECISION

An individual is disqualified for benefits if, for the purpose of obtaining benefits, he or she either willfully made a false statement or representation, with actual knowledge of the falsity of the statement or representation, or willfully failed to report a material fact. (Unemployment Insurance Code, section 1257(a).)

“Willful” means intending the result which actually comes to pass, and does not imply any malice or wrong. To do a thing willfully is simply to do it knowingly. (Precedent Decision P-B-72.)

In Precedent Decision P-B-224 the appeals board held that neither simple negligence nor innocent mistake can support a charge of willful omission or commission of an act. A claimant is entitled to a presumption of innocence.

In this case, the claimant reported a lay-off because the employer had announced that her division would eventually be disbanded and many jobs had already been relocated. Although the claimant's position was not one of them, she nevertheless expected to lose her job in the same manner. The claimant should have told the department she retired voluntarily, but under these circumstances her failure to do so is attributed to simple negligence.

It is therefore found that the claimant did not make a willful false statement in order to obtain benefits. She is not disqualified under code section 1257(a). The 5 week penalty is canceled.

DECISION

The determination is reversed. The claimant is not disqualified for benefits under Unemployment Insurance Code section 1257(a). Benefits are payable provided the claimant is otherwise eligible.

ING:mb