

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

TERESA A. GONSALVES
(Claimant)

EMPLOYMENT DEVELOPMENT DEPARTMENT

PRECEDENT
BENEFIT DECISION
No. P-B-413
Case No. 79-7032

Office of Appeals No. S-4P-2295

The Department appealed from the decision of the administrative law judge which held that the claimant was not ineligible for benefits under section 1253.3 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant was employed as a faculty secretary by the Feather River Community College in Quincy, California. Her employment terminated effective June 30, 1979 for reasons she describes as the employer's "budgetary limitations."

During the 1978-79 school year, and also during the three preceding school years, the claimant worked on a "ten-month" basis. This means that her employment would commence on the first working day of September and terminate on the last working day of the following June.

When the claimant's employment terminated in June of 1979 it was considered a virtual certainty that she would return to the same position in September.

Feather River Community College operated a summer session in 1979 from about June 23 to August 12. Some instructors and other personnel were employed for the summer session, but there was no work available for the claimant. On September 4, 1979 she returned to work at her regular position with the college.

Feather River Community College confers the A.A. degree. Its graduates are eligible to enroll in a four-year college to pursue courses of study leading to a bachelor's degree.

REASONS FOR DECISION

Section 1253.3 of the Unemployment Insurance Code states, in pertinent part:

"(a) Notwithstanding any other provision of this division, unemployment compensation benefits, extended duration benefits, and federal-state extended benefits are payable on the basis of service to which Section 3309(a)(1) of the Internal Revenue Code of 1954 applies, in the same amount, on the same terms, and subject to the same conditions as such benefits payable on the basis of other service subject to this division, except as provided by this section.

"(b) Benefits specified by subdivision (a) of this section based on service performed in the employ of a nonprofit organization, or of any public entity as defined by Section 605, with respect to service in an instructional, research, or principal administrative capacity for an educational institution shall not be payable to any individual with respect to any week which begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

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

"(d) Benefits specified by subdivision (a) of this section based on service performed in the employ of a nonprofit organization, or of any public entity as defined by Section 605, with respect to services specified by subdivision (b) or (c) shall not be payable to any individual with respect to any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

"(e) For purposes of this section, 'institution of higher education*' means an educational institution which is a college or university"

The general intent of this law is that teachers and other school employees will not be eligible for unemployment insurance benefits during a summer vacation, or in other "recess" periods, unless they have become unemployed in the sense that they will not have a job to return to at the expiration of such a period.

Analysis of the pertinent language in the statute indicates that paragraph "b" applies only to members of professional staffs such as teachers, principals, and deans. As the claimant is employed as a secretary, she is not within this category.

The succeeding paragraph, "c," appears to cover all those employees not included in paragraph "b." However, an exception is indicated by the parenthetical phrase "other than an institution of higher education," which immediately follows the words "educational institution." In other words, a non-professional employee of an institution of higher education would be exempted from the ineligibility provisions of the statute.

The decision of the administrative law judge held that Feather River Community College is an institution of higher education and therefore the claimant is not subject to ineligibility under section 1253.3. In its appeal to this Board, the Department urges that such finding is erroneous and that Feather River Community College is not an institution of higher education within the meaning of the cited section. We do not agree.

Part 40 (also called the Donahoe Higher Education Act), Chapter 1, section 66010, of the California Education Code, provides in pertinent part:

"Public higher education consists of (a) all public community colleges heretofore and hereafter established pursuant to law. . . ." (Emphasis added.)

Section 66014 of Part 40 states:

"The provisions of this part [i.e., Part 40] shall supersede the provisions of any other law which conflict with the provisions of this part." (Emphasis added.)

It is evident that the legislature has included community colleges within its categorization of institutions of higher education. Indeed, it has gone beyond this and provided by statute that the definition will supersede any conflicting definitions elsewhere in the law. Consequently, we conclude that California community colleges are, by law, institutions of higher education for unemployment insurance purposes within the meaning of section 1253.3 of the code.

We hold that Feather River Community College is an institution of higher education and that the claimant, as a nonprofessional employee thereof, is exempt from the ineligibility provisions of section 1253.3 of the Unemployment Insurance Code.

DECISION

The decision of the administrative law judge is affirmed. Benefits are payable provided the claimant is otherwise eligible.

Sacramento, California, June 12, 1980.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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