

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

ROSE ANN JOHNSON
(Claimant)

Office of Appeals No. LB-22379

PRECEDENT
BENEFIT DECISION
No. P-B-440
Case No. 84-8212

The claimant appealed from those portions of the decision of the administrative law judge which held her ineligible for benefits under section 1253.3 of the Unemployment Insurance Code beginning December 11, 1983, disqualified for benefits under section 1257(b) of the code for seven weeks ending January 28, 1984, and liable for an overpayment of \$996 under section 1375 of the code. The issue arising under section 1253(c) of the code was not decided.

STATEMENT OF FACTS

The claimant, a music instructor, taught for the Coast Community Colleges, Golden West College, beginning in 1976. She received tenure in September 1980 and continued to teach there through the Spring semester of 1983. In a letter dated May 5, 1983 the claimant was notified that the Governing Board of the Coast Community College District had voted to terminate her services as of the last working day prior to July 1, 1983. The notice indicated that the termination was in no way reflective of her performance. In fact, the termination was precipitated by a fiscal crisis within the college district. The claimant filed for unemployment insurance benefits and established a valid claim for benefits effective September 4, 1983, with a weekly benefit amount of \$166.

The claimant then searched for teaching and administrative work. About December 18, 1983 she received an offer of reinstatement to her former position beginning February 6, 1984 (Spring semester) or August 20, 1984 (Fall semester) at her option. On December 23, 1983 the claimant accepted the reinstatement offer at Golden West College effective August 20, 1984.

The claimant selected the August 20, 1984 return date because of other job prospects. In addition to a possible position to which she was referred by her career counseling firm, on December 15, 1983 the claimant received a tentative offer to teach the Spring semester at California State University at Long Beach on a three-quarter time basis. This position began January 30, 1984 and the claimant ultimately accepted it. She believed it offered career enhancement beyond community college teaching. However, the claimant continued to pursue other job leads in December and January and would have accepted a more attractive position had one been offered.

The Department assessed an overpayment of \$996 for the weeks ending December 17, 1983 through January 21, 1984, finding benefits had been paid before it determined the claimant was ineligible under code sections 1253.3 and 1253(c) and disqualified under code section 1257(b). The claimant's receipt of the reinstatement offer led to the invoking of code section 1253.3. The claimant's selection of the August 20, 1984 reinstatement date in preference to February 6, 1984 resulted in the Department's determinations under code sections 1257(b) and 1253(c). The Department found the claimant had refused an offer of suitable work and had restricted herself to part-time work by accepting the three-quarter time teaching position with California State University at Long Beach.

REASONS FOR DECISION

Section 1253.3 of the code provides 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, or of any federally operated school, 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 that period, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs services in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services for any educational institution in the second of the academic years or terms."

* * *

"(e) For purposes of this section, 'reasonable assurance' includes, but is not limited to, an offer of employment made by the educational institution, provided that the offer is not contingent on enrollment, funding, or program changes."

Here the pertinent issue is whether benefits may be denied under code section 1253.3 during a week that occurs other than between two successive academic years or terms. Pursuant to that section ineligibility results ". . . with respect to any week which begins during the period between two successive academic years or terms . . ." if the claimant ". . . 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."

The claimant last taught during the Spring term of the 1982-1983 academic year. She was separated from her job and became unemployed. She did not teach nor did she receive an offer to teach during the Fall term of the 1983-1984 academic year. The claimant did receive offers of employment in December 1983 to teach the Spring term of the 1983-1984 academic year. However, at that time she was not in a recess period between two successive terms or two successive academic years. Further, there was no sabbatical or other agreement on which ineligibility under this code section might be established. Accordingly, contrary to the decision of the administrative law judge, code section 1253.3 may not be invoked to deny the claimant benefits beginning December 11, 1983.

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 when there is no sabbatical or other agreement applicable.

Section 1257(b) of the California Unemployment Insurance Code provides that an individual is disqualified for unemployment benefits if "he, without good cause, refused to accept suitable employment when offered to him, or failed to apply for suitable employment when notified by a public employment office."

Section 1258 of the code defines "suitable employment" as (1) "work in the individual's usual occupation" or (2) work "for which he is reasonably fitted."

Here the claimant accepted her former employer's reinstatement offer effective August 20, 1984. She could have accepted reinstatement as of February 6, 1984 but chose not to because she had already received an offer to teach for the Spring term at a state university starting January 30, 1984. She was also awaiting word on another position. She subsequently accepted a substantial position with the university confident that this employment enhanced her professional career opportunities without losing reinstatement rights with her community college employer. The record establishes that she actively pursued and accepted employment opportunities in appropriate fashion. In these circumstances, we conclude the claimant's actions did not constitute a refusal of an offer of suitable employment. She in effect accepted both offers. Thus the administrative law judge erred in holding the claimant disqualified for benefits under code section 1257(b).

We now turn to the question of whether the claimant was available for work within the meaning of section 1253 (c). That matter was not addressed by the administrative law judge as it was moot in view of his disposition of the section 1253.3 issue. Since we have reversed that finding the matter must now be resolved.

Section 1253(c) of the California Unemployment Insurance Code provides that a claimant is eligible to receive benefits with respect to any week only if "he was able to work and available for work for that week."

The California Supreme Court, in Sanchez v. Unemployment Insurance Appeals Board (1977), 20 Cal. 3d 55; 141 Cal. Rptr. 146, defined "availability":

" 'Availability for work' within the meaning of Section 1253(c) requires no more than (1) that an individual claimant be willing to accept suitable work which he has no good cause for refusing and (2) that the claimant thereby make himself available to a substantial field of employment."

Here the Department determined that the claimant was not available for work as she had restricted herself to part-time employment. However, the weight of the evidence is to the contrary. From mid-December 1983 to January 30, 1984, the claimant was consistently searching for work and was willing to accept suitable full-time employment. Her search for work was even expanded to include administrative positions not directly related to the teaching of music. The fact that she opted to accept reinstatement at her former full-time position in August rather than February 1984, alone, does not establish the restriction alleged. It is, arguably, some evidence of a restriction, but when all of the circumstances are examined we find the claimant was able and available for work within the meaning of section 1253(c) of the code. Accordingly, the administrative law judge's finding of mootness must be reversed and the claimant found available for work within the meaning of code section 1253 (c).

The issue remaining is whether the claimant was overpaid benefits and properly held liable for repaying \$996 under section 1375 of the code.

Section 1375 of the California Unemployment Insurance Code provides that a claimant who is overpaid benefits is liable for this amount unless the overpayment was not due to fraud, misrepresentation or wilful nondisclosure on his part, was received without fault on his part, and its recovery would be against equity and good conscience.

Having previously concluded the claimant was not ineligible for benefits under code sections 1253.3 and 1253 (c), nor disqualified under section 1257(b), it follows that the claimant was entitled to the benefits she received. Accordingly, she was not overpaid benefits for the six weeks ending January 21, 1984. There being no overpayment, the notice of overpayment must be cancelled.

DECISION

The appealed portions of the administrative law judge's decision are reversed. The claimant is not ineligible for benefits under sections 1253.3 and 1253(c) of the code beginning December 11, 1983. The claimant is not disqualified from the receipt of benefits under section 1257(b). The notice of overpayment is cancelled.

Sacramento, California, March 26, 1985.

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