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

NAOMI R JORDAN
Claimant

Precedent Benefit
Decision No. P-B-504

SAN DIEGO UNIFIED SCHOOL DISTRICT
Employer-Appellant

DECISION

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

ROBERT DRESSER

MICHAEL ALLEN

ROY ASHBURN

Pursuant to section 409 of the California Unemployment Insurance Code, AO-317936 is hereby designated as Precedent Decision No. P-B-504.

Adopted as Precedent: December 10, 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 Code[1] beginning June 17, 2012 through August 25, 2012.

ISSUE STATEMENT

The issue in this case is whether the claimant, a professional[2] 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.

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[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 basis[6] 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).)

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[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

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[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.

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[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.