

- DECISION -

Claimant:	Decision No.:	5705-BR-12
PATRICIA DEARING	Date:	January 16, 2013
	Appeal No.:	1223562
	S.S. No.:	
Employer:	L.O. No.:	63
COMMUNITY COLLEGES OF BALTO CO	Appellant:	Claimant

Issue: Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 909.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: February 15, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the following findings of fact and conclusions of law and reverses the hearing examiner's decision

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., § 8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification

provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training*, 309 Md. 28 (1987).

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner, or evidence that the Board may direct to be taken, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d); COMAR 09.32.06.04*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

Md. Code Ann., Lab. & Empl. Art., § 8-909 provides:

Employees of governmental entities or charitable, educational or religious organizations

(a) In general. -- Subject to the provisions of this section, benefits based on service in covered employment under §§ 8-208(a) and 8-212(c) of this title shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service in covered employment.

(b) Educational institutions; services performed in instructional, research, or principal administrative capacity. --

(1) With respect to services performed in an instructional, research, or principal administrative capacity for an educational institution, benefits may not be paid based on those services for any week of unemployment that begins during:

- (i) a period between 2 successive academic years;
- (ii) a similar period between 2 regular but not successive terms; or
- (iii) a period of contractually provided paid sabbatical leave.

(2) This subsection applies only to any individual who:

(i) performs the services in an instructional, research, or principal administrative capacity in the first of 2 academic years or terms; and

(ii) has a contract or reasonable assurance that the individual will perform the services in an instructional, research, or principal administrative capacity for any educational institution in the second of the 2 academic years or terms.

(c) Educational institutions; services performed in instructional, research, or principal administrative capacity -- Services performed in other capacities. --

(1) With respect to services performed for an educational institution in any capacity other than instructional, research, or principal administrative, benefits may not be paid on the basis of the services for any week of unemployment that begins during a period between 2 successive academic years or terms.

(2) This subsection applies to any individual who:

(i) performs the services described in this subsection in the first of 2 academic years or terms; and

(ii) has a reasonable assurance that the individual will perform the services in the second of the 2 successive academic years or terms.

(3) Before July 1 of each year, each educational institution shall provide the Department with the name and Social Security number of each individual who has a reasonable assurance of performing covered employment described under this subsection in the next academic year.

(4) If an individual whose name and Social Security number are required to be submitted to the Department under paragraph (3) of this subsection is not given an opportunity to perform the services for the educational institution for the next successive year or term, the individual shall be eligible for benefits retroactively if the individual:

(i) files a timely claim for each week;

(ii) was denied benefits solely under this subsection; and

(iii) is otherwise eligible for benefits.

(d) Educational institutions; services performed in instructional, research, or principal administrative capacity -- Vacations and holidays. --

(1) With respect to services described in subsections (b) and (c) of this section, an individual may not be eligible for benefits based on the services for any week that begins during an established and customary vacation period or holiday recess.

(2) This subsection applies to any individual who:

(i) performs the services in the period immediately before the vacation period or holiday recess; and

(ii) has a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(e) Educational service agencies. --

(1) In this subsection, "educational service agency" means a governmental entity that is established and operated exclusively to provide educational service to one or more educational institutions.

(2) If any service described in subsection (b) or (c) of this section is performed by an individual in an educational institution while in the employ of an educational service agency, the individual is subject to subsections (b), (c), and (d) of this section and benefits may not be paid if not allowed under subsection (b), (c), or (d) of this section.

(f) Services provided on behalf of educational institutions. -- If any service described in subsection (a) of this section is provided by an individual to or on behalf of an educational institution, the individual is subject to subsections (b), (c), and (d) of this section and benefits may not be paid if not allowed under subsections (b), (c), and (d) of this section.

The legislative intent is clear from the plain language and statutory scheme as well as the legislative history; the General Assembly sought to deny unemployment benefits to school employees during scheduled and anticipated holidays, vacations, and breaks between academic terms when the employee has a reasonable assurance of continued employment. As one court has explained, "[t]he rationale for this limitation is that school employees can plan for those periods of unemployment and thus are not experiencing the suffering from unanticipated layoffs that the employment-security law was intended to alleviate." *Thomas v. DLLR*, 170 Md. App. 650, 665-66 (2006), citing *Baker v. Dep't of Employment and Training Bd. of Review*, 637 A.2d 360, 363 (R.I. 1994); See also *University of Toledo v. Heiny*, 30 Ohio St. 3d 143, 30 Ohio B. 454, 507 N.E.2d 1130, 1133 (Ohio 1987) (stating that the provisions of that state's unemployment compensation legislation, which allowed benefits to unemployed nonprofessional employees of educational institutions "whose employment prospects for the ensuing academic year are doubtful," "was not enacted to 'subsidize the vacation periods of those who know well in advance that they may be laid off for certain specified periods'" (quoting *Davis v. Commonwealth, Unemployment Compensation Board of Review*, 39 Pa. Commw. 146, 394 A.2d 1320, 1321 (Pa. 1978))).

Md. Code Ann., Lab. and Empl. Art., § 8-101(n) defines "educational institution" as "an institution that offers participants, students, or trainees an organized course of study or training that is academic, technical, trade-oriented, or preparatory for gainful employment in a recognized occupation," and includes "an institution of higher education." In contrast, § 8-909(e) defines "educational service agency" as "a governmental entity that is established and operated exclusively to provide educational services to one or more educational institutions."

To meet the "reasonable assurance" standard, an employer need not demonstrate that an employee is guaranteed the job in the next academic semester. Rather, the employer must establish that the employee has a reasonable expectation of being recalled to perform the same or similar services. *Wenner v. Frederick County Board of Education*, 42-BR-93.

In the instant case, it is undisputed that (a) the claimant was employed by an educational institution, (b) had unemployment that occurred between successive academic terms or years, and that (c) was employed in a capacity covered by *Maryland Annotated, Labor & Employment Article, § 8-909*. Due to the nature of the claimant's contract with the employer, there is no reasonable assurance that the claimant will receive a contract to teach courses for this employer during the next academic year or term. The claimant's contract with the employer specifically states that the appointment does not extend beyond the period set forth in the contract and the contract does not establish any priority for future appointments. Furthermore, the contract states that the college may terminate the contract immediately and without further obligation to the adjunct faculty member if the course(s) are cancelled due to insufficient enrollment or if changes in the College's schedule make it appropriate for a full time faculty member to be assigned the course(s) as

part of his/her total load. Especially in these economic times, enrollment at higher education facilities fluctuates due to the changing finances of the individual and the family and the academic institution.

The Board finds that based on a preponderance of the credible evidence that the claimant did not have reasonable assurance of returning to work in the same capacity for the next academic term or year. The claimant is eligible for benefits provided the claimant meets the other eligibility requirements of the Maryland Unemployment Law. The decision of the hearing examiner shall be reversed for the reasons stated herein.

DECISION

It is held that the claimant did not have reasonable assurance of returning to the same or similar employment with an educational institution in the next academic year within the meaning of *Md. Code Ann., Labor & Emp. Article, Section 8-809*. The claimant is eligible for benefits beginning May 20, 2012 provided the claimant meets the other eligibility requirements of the Maryland Unemployment Law.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

RD

Copies mailed to:

PATRICIA DEARING
COMMUNITY COLLEGES OF BALTO CO
SUSAN BASS DLLR
NAOMI RODEN
COMMUNITY COLLEGES OF BALTO CO
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

PATRICIA DEARING

SSN #

Claimant

vs.

COMMUNITY COLLEGES OF BALTO CO

Employer/Agency

Before the:
**Maryland Department of Labor,
Licensing and Regulation
Division of Appeals**
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 767-2421

Appeal Number: 1223562
Appellant: Claimant
Local Office : 63 / CUMBERLAND
CLAIM CENTER

August 01, 2012

For the Claimant: PRESENT

For the Employer: PRESENT , MILDRED SINGLETON, NAOMI RODEN

For the Agency:

ISSUE(S)

Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 909.

FINDINGS OF FACT

The employer, the Community Colleges of Baltimore County, in this case is an education institutional. The claimant, Patricia Dearing, began working for it on or about February 4, 2012. The claimant last worked for it on or about May 19, 2012, corresponding to the last day of the Spring 2012 semester.

The claimant was employed as an adjunct instructor, which is either an instructional, research or principal administrative position.

The next successive semester begins on August 27, 2012, and the claimant has reasonable assurance of returning to work in the claimant's previous position at that time.

CONCLUSIONS OF LAW

The Md. Code Ann., Labor & Emp. Article, Section 8-909(b) provides:

(1) With respect to services performed in an instructional, research, or principal administrative capacity for an educational institution, benefits may not be paid based on these services for any week of unemployment that begins during:

- (i) a period between 2 successive academic years;
- (ii) a similar period between 2 regular but not successive terms; or
- (iii) a period of contractually provided paid sabbatical leave.

(2) This subsection applies only to an individual who:

- (i) performs the service in an instructional, research, or principal administrative capacity in the first of 2 academic years or terms; and
- (ii) has a contract or reasonable assurance that the individual will perform the services in an instructional, research, or principal administrative capacity for any educational institution in the second of the 2 academic years or terms.

To meet the "reasonable assurance" standard, an employer need not demonstrate that an employee is guaranteed the job in the next academic semester. Rather, the employer must establish that the employee has a reasonable expectation of being recalled to perform the same or similar service.

The performance of service in the successive academic term need not be of the exact same nature as the service previously performed. As long as the reasonable assurance is for service "in an instructional, research or principal administrative capacity," the requirement of Section 8-909(b) is fulfilled. Englemeyer v. Anne Arundel County Public Schools, 946-BR-89.

EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner.

It is clear and essentially undisputed that (a) the claimant was employed by an educational institution, (b) had unemployment that occurred between successive academic terms or years, and that (c) the employed was employed in a capacity covered by Section 8-909. The claimant's argument that the amount of work she receives has changed does not change the fact that the claimant has reasonable assurance of a teaching position in the fall of 2012 which is precisely what the Legislature had in mind when it created the reasonable assurance statute.

Because it is found that the claimant has reasonable assurance of returning to work in the same capacity for the next academic term or year, benefits shall be denied pursuant to the requirements set forth in Section 8-909.

DECISION

IT IS HELD THAT the claimant has reasonable assurance of returning to the same or similar employment with an educational institution in the next academic year within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-909. The claimant is disqualified from receiving unemployment insurance benefits based upon employment with the above-identified employer from the week beginning May 20, 2012 and until the start of the successive academic year commencing with the week beginning September 1, 2012. The claimant will then be eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us, or call 410-949-0022 from the Baltimore region or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

However, the claimant may be eligible for unemployment insurance benefits under other covered employment, even though wages from the above employer may not be used to determine the claimant's weekly benefit amount.

The determination of the Claims Specialist is affirmed.

E. P. Melcavage

E. P. Melcavage, Esq.
Hearing Examiner

Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-767-2404. If this request is made, the Claimant is entitled to a hearing on this issue.

A request for waiver of recovery of overpayment does not act as an appeal of this decision.

Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.

Notice of Right to Petition for Review

Any party may request a review either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A(1) appeals may not be filed by e-mail. Your appeal must be filed by August 16, 2012. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals
1100 North Eutaw Street
Room 515
Baltimore, Maryland 21201
Fax 410-767-2787
Phone 410-767-2781

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing : July 25,2012

CH/Specialist ID: WCU1D

Seq No: 003

Copies mailed on August 01, 2012 to:

PATRICIA DEARING

COMMUNITY COLLEGES OF BALTO CO

LOCAL OFFICE #63

SUSAN BASS DLLR

NAOMI RODEN

COMMUNITY COLLEGES OF BALTO CO