E.D.D. Field Office Directive

To: Field Office Managers (No DI Action Required) No.: 89-55 UI

Issued: July 20, 1989

Expires: June 30, 1990

From: Operations Branch

Subject: Cervisi et al. v. Unemployment Insurance Appeals Board

I. SUMMARY

This Directive transmits the decision issued by the California court of Appeal, First Appellate District on March 31, 1989. The, decision requires a change in the interpretation of what constitutes reasonable assurance for nontenured, part-time instructors who are employed by an institution of higher education.

II. BACKGROUND

A. Court Case

The claimants were part-time, hourly instructors who were employed by a community college district. They completed their assignments at the end of the spring semester and applied for unemployment insurance benefits for the period between the spring and fall semesters.

The Department held that they were not eligible for unemployment insurance benefits as they had "reasonable assurance" of being employed by the school employer in the succeeding school year. The claimants appealed and the Department's decision was affirmed by an Administrative Law Judge (ALJ). The claimants appealed from the ALJ's decision and the Board affirmed the ALJ's decision.

The Claimants filed a petition for a writ of mandate. The Superior Court ruled that the claimants did not have reasonable assurance. The Board appealed from the Superior Court's decision and the Court of Appeal affirmed the decision by the lower court.

The Superior Court in its decision held that the record established in the administrative proceedings clearly demonstrated that the assignment given to the hourly instructors depended on the classes obtaining sufficient enrollment. The Court noted that the assignment form issued to the instructors stated that "employment is contingent upon adequate class enrollment." The Court also held that the record established that district enrollment had dropped. The Superior Court concluded that the offers of employment made by the school employer were "contingent on adequate enrollment, funding, and the approval of the District's Board of Governors."

The Superior Court concluded that "under the statute, an assignment that is contingent on enrollment, funding, or program changes is not a 'reasonable assurance' of "employment."

The Court of Appeal adopted the Superior Court's findings and held that a contingent assignment is not a "reasonable assurance" of continued employment within the meaning of Section 1253.3.

B. Reasonable Assurance Prior to Cervisi

Prior to Cervisi, when determining whether a nontenured, hourly instructor had "reasonable assurance," we applied the principles established in Russ. In that case the Court held that an individual who worked in a nonprofessional capacity had "reasonable assurance" even though the school district for which she worked had not received federal funding at the end of the school year. The Court held that there was a history of individuals in that classification working under the same conditions and therefore there was "reasonable assurance" since the statute did not require there be a guarantee of employment.

The Department applied the principles established in Russ to employees who worked in a professional capacity as well as to those who worked in a nonprofessional capacity. These individuals who are employed by the schools have generally attained permanent civil service status and are assured of employment if they have not been given appropriate notice of termination.

C. Effect of Cervisi

The provisions of Cervisi are applicable only to non-tenured, hourly instructors employed by an institution of higher education. Such individuals are not subject to disqualification under the provisions of Section 1253.3 if the offer of employment (whether made orally or in writing) contains the proviso that the employment is contingent on class enrollment or funding.

D. Substitute Teachers

The provisions of Cervisi do not apply to substitute teachers. We will continue to apply the principles in Long Beach. The Court of Appeal in Cervisi made reference to the trial court distinguishing Cervisi from Long Beach. See Section III. A.3 of the School Employee Claims Handbook for a discussion of the Long Beach case.

Substitutes would have "reasonable assurance" if the school employer offers them work as substitutes in the next school year or term and they are expected to work under substantially the same economic terms and conditions as they did in the prior school year or term.

III. REFERENCE

School Employee Claims Handbook, Sections III., IV. A. and IV. B.

IV. ACTION REQUIRED

A. Completion

Follow existing procedures as contained in the School Employee Claims Handbook, Section IV. B, for scheduling the claim appropriately. There are no changes in these instructions. If the claimant states that he or she has an offer of work with a school employer, schedule the claimant for a determination interview.

B. Determinations

Effective immediately, apply the principles established by the Court of Appeal to determine whether an individual who is a nontenured, hourly instructor has "reasonable assurance."

If it is established that the offer (whether made verbally or in writing) is contingent on funding or enrollment, the claimant is not subject to disqualification under the provisions of Section 1253.3.

Token Offer of Employment

If the school employer reports that the school will guarantee the individual employment of one or two weeks while determining whether the class obtains sufficient enrollment, this does not constitute "reasonable assurance." This would be considered to be token offer of employment and not a bona fide offer. Therefore, the individual who receives such an offer, would not be subject to disqualification under Section 1253.3.

Offer of Employment With Other School Employer

If an individual, who is a nontenured, hourly instructor employed by an institution of higher education, also works for a lower education school employer (grades K through 12) and has an offer of work with this employer and the economic terms and conditions are substantially the same, the individual would be subject to disqualification under the provisions of Section 1253.3. Under the provisions of Section 1253.3, all school wages are subject to denial if there is a finding that an individual has "reasonable assurance" of employment with a school employer in the post-recess period (refer to Section VII. E. of the School Employee Claims Handbook).

V. INQUIRIES

Any questions regarding the procedures in this Directive should be addressed to Loren Weatherly at (916) 323-7931 or ATSS 473-7931.

/s/ MARK SANDERS
Deputy Director