

[REDACTED]
By Email



RCE113200X0000000010G



State of Ohio
Unemployment Compensation Review Commission
P.O. Box 182299
Columbus, Ohio 43218-2299

Docket No: H-2013014521

DECISION

In re claim of:

██████████ Appellant

Employer:

University of Akron
UCO No.: 0800250007-0000

Employer Representative:

Neil Bhagat - Buckingham, Doolittle & Burroughs
LLP

CASE HISTORY

The claimant, ██████████ filed an Application for Determination of Benefit Rights for a benefit year beginning May 12, 2013.

On June 13, 2013, the Director issued a Redetermination which held that claimant was not eligible to receive benefits for the period of May 12, 2013, through August 24, 2013, because she has reasonable assurance of continued employment with an institution of higher education for the next academic year or term. The Redetermination also held that claimant had received benefits to which she was not entitled for the weeks ending May 18, 2013, through June 8, 2013. Other issues may have been addressed in this Redetermination which are not at issue in this appeal.

On June 13, 2013, an appeal from the Redetermination was filed by the claimant.

On June 14, 2013, the Ohio Department of Job and Family Services transferred jurisdiction to the Unemployment Compensation Review Commission.

On July 12, 2013, a hearing was held before Hearing Officer Emily Briscoe by telephone. Claimant appeared and offered testimony at this hearing. University of Akron was represented by Neil Bhagat, Attorney at Law, with Sheldon Wrice appearing as the witness for the employer.

FINDINGS OF FACT

Claimant was employed by University of Akron as a part-time Adjunct Instructor during the Spring 2013 semester, which ended on May 10, 2013. Sometime in April of 2013, claimant was verbally offered a course to teach during the Fall 2013 semester, which is to begin on August 27, 2013. No written contract or offer of work was made. She has accepted this verbal offer. However, if enrollment does not meet a certain level, the class will be cancelled. Furthermore, if a full-time employee wants to teach this course, claimant will be bumped from the assignment. This has occurred twice in the three years claimant has worked for University of Akron.



RCE113200X0000000020G

ISSUE 1

From May 12, 2013, through August 24, 2013, did the claimant have a contract or a reasonable assurance of employment with the University of Akron for the University of Akron's 2013 fall semester?

LAW

Benefits based upon work for a school shall not be paid for any week of unemployment which begins during the period between two school terms, if the individual worked in the first term and has a reasonable assurance of work at a school in the next term. **4141.29 (I) (1) (a) O.R.C.**

REASONING

The Ohio Ninth District Court of Appeals stated in the decision in *Univ. of Akron v. Ohio Dept. of Job & Family Servs.*, 2009-Ohio-3172, that:

{¶14} At the outset, we note that the Revised Code does not provide a definition of the term “reasonable assurance.” See *Allen v. Administrators, OBES*, (May 14, 1997), 1st Dist. No. C-960705, at *2 (explaining that the legislature amended the statute, completely deleting any reference to the definition of “reasonable assurance”). The University urges us to apply the definition of “reasonable assurance” set forth in *Allen* wherein the First District relied on the school board’s definition of “reasonable assurance” as “a mere likelihood that employment could occur.” Id.

{¶15} Webster’s Dictionary provides a different definition of “assurance” than the one set forth in *Allen*. Webster’s defines “assurance” as a “pledge” or “guarantee.” Merriam-Webster’s Eleventh Collegiate Dictionary (2005) 75. “Reasonable” is defined by Webster’s as “moderate” or “fair.” Id. at 1037. Read together, reasonable assurance is defined as a moderate guarantee. This definition evokes far more certainty than a “mere likelihood.” See *Allen*, supra, at *2. However, assuming the definition set forth in *Allen* was plausible, we are not bound by the decisions of our sister courts. *State v. Coleman*, 9th Dist. No. 06CA008877, 2006-Ohio- 6329, at ¶9.

Based on the decision in *Univ. of Akron v. Ohio Dept. of Job & Family Servs.* as referred to above, an *absolute guarantee* is not needed for there to be a “reasonable assurance,” but at least a *moderate guarantee* is needed for there to be a “reasonable assurance.” With respect to the evidence in the instant case, the Hearing Officer is not persuaded that the claimant had at least a *moderate guarantee* of employment with the University of Akron for the University of Akron’s 2013 fall semester at any time from May 12, 2013, through August 24, 2013. As such, she was entitled to the receipt of benefits for this period.

ISSUE 2

Did claimant receive benefits to which she was not entitled for the weeks ending May 18, 2013, through June 8, 2013?



RCE113200X0000000030G

LAW

An individual who within three years of the end of the individual's benefit year or within six months after the determination under which the individual was credited with a waiting period or paid benefits, whichever is later, has been paid benefits, or credited with a waiting week to which the individual was not entitled, shall have the claim canceled. Benefits that are overpaid shall be repaid to the department, or withheld from future benefits, unless the overpayment results from a clerical error in a decision, or an error in an employer's report. **4141.35 (B) O.R.C.**

REASONING

For the reasons explained above, the Hearing Officer has determined that claimant was entitled to the receipt of benefits for the period from May 12, 2013, through August 24, 2013. As such, no repayment is required.

DECISION

The Director's Redetermination, issued June 13, 2013, is modified.

For the period of May 12, 2013, through August 24, 2013, the claimant did not have a contract or a reasonable assurance of employment with the University of Akron for the University of Akron's 2013 fall semester. The between-terms disqualification for this period is removed. As such, claimant was entitled to the receipt of benefits for the period from May 12, 2013, through August 24, 2013, and no repayment is required.

This decision rules only on the issue set forth above.

Emily Briscoe, Hearing Officer

/EB

OJI Determination #: 226137409

[RCX Temp: BlankHistory]

APPEAL RIGHTS

This decision was mailed on : July 22, 2013

A Request for Review before the U.C. Review Commission may be filed by any interested party within twenty-one calendar days after this decision is mailed. Said twenty-one day period is calculated to end on August 12, 2013.

The Request for Review must be in writing and signed by the appealing party or an authorized representative. The request should set forth the reasons why the appellant disagrees with the Hearing Officer's decision. You may file your Request for Review by mailing it to the U.C. Review Commission, PO Box 182299, Columbus, Ohio 43218-2299, or by faxing it to (614) 387-3694.

This decision was sent to the following:

[REDACTED]

Via Email

University of Akron
302 E BUCHTEL COMMON
AKRON, OH 44325-6210

Attn: University of Akron
BUCKINGHAM DOOLITTLE & BURROUGHS LLP
3800 Embassy Pkwy Ste 300
Akron, OH 44333-8398

Attn: Neil Bhagat
Buckingham, Doolittle & Burroughs LLp
3800 EMBASSY PKWY STE 300
AKRON, OH 44333-8398