

**-DECISION-**

Claimant:

SUSANN ENGELHARDT

Decision No.: 00505-BH-20

Date: April 16, 2020

Appeal No.: 1911873

Employer:

HOOD COLLEGE FREDERICK MD  
ATT: TREASURER  
401 ROSEMONT AVENUE  
FREDERIC MD 21701-8575

S.S. No.:

L.O. No.: 01

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: May 15, 2020

**- APPEARANCES -**

FOR THE CLAIMANT:

Susann Engelhardt  
Raquel Flynn  
Nicole K. McConlogue, Esq.

FOR THE EMPLOYER:

James Stuller  
Matthew Bennett

## PRELIMINARY STATEMENT

On, January 15, 2020, the Board of Appeals issued a Notice of Hearing for oral argument before the Board of Appeals to be held on February 11, 2020, to determine whether the claimant had reasonable assurance of returning to work for an educational institution, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-909*. Both the claimant and the employer participated in the Board Hearing.

## REVIEW OF THE RECORD

The claimant filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Division Decision issued on September 27, 2019. That Decision held the claimant had reasonable assurance of returning to the same or similar work, at an academic institution, in the second of two consecutive terms, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-909*. Benefits were denied, based on this employment, for the week beginning May 12, 2019, through the week ending August 31, 2019.

On appeal, the Board reviews the evidence of record from the Lower Appeals Division Telephone Hearing. The Board reviews the record *de novo* and may affirm, modify or reverse the hearing examiner's Findings of Fact or Conclusions of Law, on the basis of the evidence submitted to the hearing examiner or the evidence the Board may direct to be taken. *Md. Code Ann., Lab. & Empl. Art., §8-5A-10*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03 (E) (1)*. Only if there has been clear error, a defect in the record or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

The General Assembly declared, 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)*.

In this case, the Board thoroughly reviewed the record from the Lower Appeals Division Telephone Hearing. The record is complete. Both parties appeared and testified. The hearing examiner gave both parties the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. The hearing examiner gave both parties an opportunity to make a closing statement. The necessary elements of due process were observed throughout the hearing.



The Board finds the hearing examiner's Findings of Fact are not fully supported by substantial evidence in the record; are incomplete; and include statements which are not facts, but rather conclusory statements. Accordingly, the Board strikes the hearing examiner's Findings of Fact in their entirety and in their place makes the following Findings of Fact:

The claimant, Susann Engelhardt, began working for the employer, Hood College Frederick Maryland, an educational institution, in August of 2011, and, for the purposes of the instant appeal, her last day worked was May 12, 2019. The claimant worked as an Adjunct Lecturer and during the 2019 spring semester she taught three (3) four (4) credit classes and one (1) three (3) credit class, for which she earned gross wages of \$13,470. (See Board Exhibit 'A').

At the conclusion of the 2019 spring semester, the employer sent the claimant a letter indicating the employer anticipated utilizing the claimant's services during the upcoming 2019 fall semester. (See Board Exhibit 'B'). The claimant received this letter and accepted the employer's terms. The employer's offer of employment for the 2019 fall semester was for the position of an Adjunct Lecturer, teaching two (2) four (4) credit classes, for which the claimant would earn gross wages of \$6,960. (See Board Exhibit 'B'). During the 2018 fall semester the claimant taught four (4) four (4) credit classes, for which she earned gross wages of \$12,960. The difference between the number of classes the employer offered the claimant during the 2018 fall and 2019 spring semesters and the 2019 fall semester was not the result of declining enrollment.

The claimant returned to work for the employer on August 26, 2019, for the 2019 fall semester. The claimant remains employed as of the hearing on this matter.

The Board concludes these facts warrant different Conclusions of Law and a Reversal of the hearing examiner's Decision.

*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



*A2d 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 A2d 1321, 1321 (Pa. 1978)).

*Md. Code Ann., Lab. & 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, under the provisions of Maryland Law and the guidance from the Department of Labor's Unemployment Insurance Program Letter 5-17, the employment offer should meet the following three standards:

- (1) The offer of employment may be written, oral, or implied, and must be a genuine offer, that is, an offer made by an individual with actual authority to offer employment.
- (2) The employment offered in the following academic year or term, or remainder of the current academic year or term, must be in the same capacity.
- (3) The economic conditions of the job offered may not be considerably less in the following academic year or term (or portion thereof) than in the first academic year or term (or portion thereof).

In her appeal, the claimant offers no specific contentions of error as to the Findings of Fact or the Conclusions of Law in the hearing examiner's Decision, but contends the hearing examiner failed to take into consideration *U.S. Dept. of Labor UIPL 5-17*. The claimant cites to the evidence of record and argues the fifty percent (50%) reduction between the number of classes or credit hours she taught during the first academic term and the number of classes or credit hours the employer offered her for the following academic term fails to meet the third prerequisite in *U.S. Dept. of Labor UIPL 5-17*. The Board finds the claimant's argument persuasive.

As noted above, to meet the "reasonable assurance" standard, an employer must establish the employee has a reasonable expectation of being recalled to perform the same or similar services. The key phrase there is "same or similar." A pattern of teaching each semester, year after year, may establish a reasonable likelihood, notwithstanding the contingent nature of the offer, the Adjunct Lecturer will teach again the next semester; however, such a pattern is not, by itself, sufficient to demonstrate reasonable assurance, as meant by the Law and Department of Labor Guidance. The claimant must also be offered employment



under economic conditions that are not substantially less. While it is true the employer offered the claimant an opportunity to return to work during the 2019 fall semester as an Adjunct Lecturer, an employee does not work for the prestige of the title, but rather for the remuneration which comes with the job. There is a considerable economic difference between earning gross wages of \$12,960 or \$13,470, and gross wages of only \$6,960. Whether one considers the 2018 fall semester or the 2019 spring semester as the base line semester, the offer of employment for the 2019 fall semester is a considerable drop off in economic terms. While the Board need not adopt a "bright line" level of reduction, a nearly fifty per cent (50%) reduction in gross wages is "considerably less" and cannot constitute a "same or similar" offer of employment.

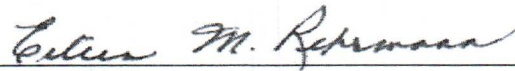
Therefore, the Board finds, based on a preponderance of the credible evidence, the claimant did not have reasonable assurance of returning to the same or similar employment with an education institution in the next academic semester or term, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-909*. The claimant is entitled to receive unemployment insurance benefits, based upon employment with this employer, from the week beginning May 12, 2019, through the week ending August 31, 2019.

**[Signatures on next page]**

**DECISION**

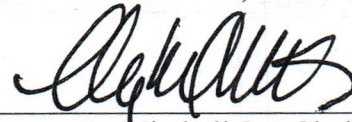
The Board holds the claimant did not have reasonable assurance, within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 8-909*. Benefits are allowed as of the week beginning May 12, 2019, through the week ending August 31, 2019.

The Hearing Examiner's Decision is Reversed.



---

Eileen M. Rehrmann, Associate Member



---

Clayton A. Mitchell Sr., Chairman

VD

Date of hearing: February 11, 2020

Copies mailed to:

SUSANN ENGELHARDT  
HOOD COLLEGE FREDERICK MD  
VIJAY IYER, ESQ.,  
HOOD COLLEGE OF FREDERICK  
JAMES A STULLER  
RAQUEL L. FLYNN, RULE 19 STUDENT ATTY.  
NICOLE MCCONLOGUE, ESQ.



## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

SUSANN ENGELHARDT

SSN #

**Claimant**

vs.

HOOD COLLEGE FREDERICK MD  
ATT: TREASURER  
401 ROSEMONT AVENUE  
FREDERICK, MD 21701-8575

**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: 1911873  
Appellant: Claimant  
Local Office : 61 / COLLEGE PARK  
CLAIM CENTER

September 27, 2019

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, VANESSA ROBERTS, JAMES STULLER

**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, Hood College, Frederick MD, is an educational institution. The claimant, Susann Engelhardt, began working for the employer in August 2011. The claimant is currently working for the employer; however, the spring semester ended the week of May 12, 2019. The claimant returned to work on August 26, 2019.

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



The next successive semester began on August 26, 2019, and the claimant did have reasonable assurance of returning to work in the claimant's previous position at that time. Specifically, the fall schedule was created in the spring of 2019 and the claimant has returned to work in each fall semester since 2011. Lastly, the claimant was scheduled to teach a class in the summer of 2019; however, the class was cancelled.

## CONCLUSIONS OF LAW

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.

## 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.

Because it is found that the claimant had 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. Specifically, the history of the employment relationship clearly demonstrated that the claimant had reasonable assurance to return in the fall semester. Additionally, the claimant acknowledged that she communicated with the employer in the spring as the fall semester was created at that time. Lastly, the fact that the claimant's summer course was cancelled is immaterial to the decision in this matter.



## 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 12, 2019 through the week ending August 31, 2019. 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](mailto:ui@dllr.state.md.us), or call 410-949-0022 from the Baltimore region or 1-877-293-4125 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-735-2258.

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.



---

M M Medvetz, 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**

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 October 15, 2019. 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: September 20, 2019  
CH/Specialist ID: WCP39  
Seq No: 001  
Copies mailed on September 27, 2019 to:

SUSANN ENGELHARDT  
HOOD COLLEGE FREDERICK MD  
COLLEGE PARK CLAIM CENTER  
HOOD COLLEGE OF FREDERICK  
VIJAY IYER  
JAMES A STULLER