

EMPLOYMENT SECURITY COMMISSION OR NORTH CAROLINA

INTERPRETATION NO. 263, SUPPLEMENT III

TO: Employment Security Commission
FROM: Thomas S. Whitaker, Chief Counsel
REFERENCE: ESC Interpretation No. 263; Supplements I and II
SUBJECT: Between Terms Denial – “REASONABLE ASSURANCES”

N.C.G.S. § 96-13(b)(1) requires the ineligibility for unemployment insurance benefits of educational personnel during all periods of vacation or recess if they have reasonable assurance of employment with the educational institution after such periods expire. What constitutes “reasonable assurance” of employment has been a problematic area for adjudicators and appeals referees.

In the majority of cases, the existence of “reasonable assurance” must be determined by considering (1) the historical relationship between the claimant and the educational institution, (2) the educational institution’s policies and procedures regarding continuing employment and the claimant’s knowledge thereof, (3) the degree of certainty, if any, expressed in the correspondence or discussion between the claimant and the educational institution’s authorized representative regarding continuing employment, and (4) what the educational institution intended to convey to the claimant regarding its commitment to furnishing continuing employment and what the claimant understood. The following items, standing alone or combined, will not constitute “reasonable assurance” of employment:

1. Continuing insurance coverage since there are laws which control such matter;
2. The right to carry over unused leave should the claimant be reemployed by the educational institution;
3. A mere statement that the claimant will be considered or eligible for reemployment; and
4. A possibility of employment contingent on the educational institution’s receipt of sufficient funding, or on the educational institution not having to give priority consideration to other individuals.

A letter received by the claimant from the educational institution stating that his/her contract of employment will not be renewed for the period after the vacation or recess

is a presumption that there is no “reasonable assurance” of continuing employment. The presumption is not rebutted by a mere showing that the letter contains reference to a possibility of an extension of employment if sufficient funding is received by the educational institution. Evidence that the historical relationship or discussion between the claimant and the educational institution establishes that the letter was a mere formality is sufficient to rebut the presumption of a no “reasonable assurance” of continuing employment.

It is imperative that the attached ESC Interpretation No. 263, Supplements I and II be reviewed by all ESC personnel responsible for raising issues and/or adjudicating issues under G.S. 96-13(b)(1). Also, resource personnel should be utilized if questionable situations arise. The Legal Department Staff will assist the resource personnel as much as possible to provide answers.

Attachments

Adopted as an official Interpretation of the Employment Security effective May 27, 1992.