IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert A. Naborn,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 480 C.D. 2025
	:	Submitted: June 16, 2026
Unemployment Compensation Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK FILED: November 18, 2026

Robert A. Naborn (Claimant) petitions for review of the order of the Unemployment Compensation Board of Review (Board) affirming a Referee's decision that denied unemployment compensation (UC) benefits under Section 402.1 of the Unemployment Compensation Law (Law).[1] We affirm.

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, added by Section 5 of the Act of July 6, 1977, P.L. 41, 43 P.S. §802.1. In relevant part, Section 802.1 states:

> Benefits based on service for educational institutions pursuant to Article X, XI or XII [of the Law] shall as hereinafter provided be payable in the same amount, on the same terms and subject to the same conditions as outlined in [S]ection 404(g) ***except that***:
> (1) With respect to service performed after December 31, 1977, in an instructional . . . capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two

(Footnote continued on next page…)

Claimant filed a UC application effective May 5, 2024. Certified Record (CR) at 3. Claimant worked for the Trustees of the University of Pennsylvania (Employer) as a part-time Dutch lecturer during the 2023-24 academic year, teaching one course and earning $5,700 per semester. *Id.* at 140; Findings of Fact (FOF) ¶¶1-2. Claimant's last day of class was May 1, 2024, and the institution's summer recess ran from May 15, 2024, through August 22, 2024. *Id.* ¶¶3-4. Claimant received an offer of reemployment for the Fall 2024 term sometime in May 2024 and returned to work on August 22, 2024, under the same economic terms and conditions as the previous academic year. *Id.* ¶¶5-6. Employer's separation submission stated that Claimant was under a "renewable one-year contract" and historically returned to his teaching assignment at the start of each academic year. CR at 36-38.

> regular terms . . . provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and ***if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms***.
>
> * * *
>
> (5) With respect to an individual who performs services described in clause (2) of this section and who pursuant to clause (2) . . . is denied benefits for the period between academic years or terms, such individual ***if he is not offered an opportunity to perform such service in the second of such academic years or terms shall be paid benefits for the period*** which commences with the first week he was denied benefits solely by the reason of clause (2) or (4) of this section, provided he had filed timely claims for benefits throughout the denial period and was otherwise eligible for benefits

43 P.S. §802.1(1) and (5) (emphasis added).

On July 3, 2024, the UC Service Center issued a determination concluding Claimant was ineligible for benefits during the recess because he had reasonable assurance of continued employment. CR at 41-42. Claimant appealed the determination, and a UC Referee conducted a hearing on January 2, 2025, at which Claimant appeared, but Employer's representative did not. *See id.* at 74-78. Ultimately, the Referee affirmed the determination, and the Board affirmed on Claimant's appeal.[2] Claimant then filed the instant petition for review.

---

[2] In relevant part, the Board explained:

> In this matter, [C]laimant worked for [E]mployer, as a part-time Dutch professor. [C]laimant has not worked for [E]mployer over the summer months for the past 15 years. [C]laimant testified to receiving an email from [E]mployer providing reasonable assurance of work in the fall semester. [C]laimant argues that because the correspondence stated that it was not an employment contract, that this removes it from being considered reasonable assurance. Reasonable assurance does not require an employment contract or absolute certainty of the position, but reasonable assurance that the position would be available. A contract of employment will certainly be considered "reasonable assurance" of returning work the following academic year. But a bona fide offer of employment will also be considered "reasonable assurance." A bona fide offer is one in which the terms for the second academic year are not substantially less than that of the first academic year. Further demonstrating that an employment contract or other absolute guarantee of work is [not] required, the UC [L]aw provides for retroactive benefits if they are not able to resume similar work through no fault of their own under Section 402.1(5) of the Law. Here [C]laimant was provided reasonable assurance advising him that he had reasonable assurance of returning to the same position of a part time Dutch professor as he had held in the preceding academic term. Accordingly, [C]laimant is ineligible for benefits pursuant to Section 402.1 of the Law.

CR at 168.

On appeal,[3] Claimant contends the Board erred in finding reasonable assurance as required by Section 402.1 of the Law. He asserts Employer's offer of employment was not an employment contract; that it was contingent on factors within Employer's control, including approval by the Dean and course scheduling; and that these outstanding contingencies defeat a finding of reasonable assurance under federal Unemployment Insurance Program Letter (UIPL) 05-17. *See* CR at 60-61; Petitioner's Brief at 12-15. Claimant also argues the Board disregarded earlier favorable administrative decisions, incorrectly relied on cases involving part-time faculty, and misapplied Section 402.1 to adjunct lecturers.

The Board responds that Pennsylvania law governs the reasonable-assurance inquiry, specifically Section 402.1(1) of the Law, and the Department of Labor and Industry's (Department) regulation at 34 Pa. Code §65.161.[4] It argues that reasonable assurance does not require a contract or

---

[3] Our review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether the findings of fact are supported by substantial evidence. *Rose Tree Media School District v. Unemployment Compensation Board of Review*, 296 A.3d 79, 81 n.3 (Pa. Cmwlth. 2023).

[4] Section 65.161 of the Department's regulations states, in pertinent part:

> (a) For purposes of [S]ection 402.1 of the [L]aw (43 P.S. §802.1), a contract or reasonable assurance that an individual will perform services in the second academic period exists only if both of the following conditions are met:
>
> > (1) The educational institution or educational service agency provides a bona fide offer of employment for the second academic period to the individual.
> >
> > (2) The economic terms and conditions of the employment offered to the individual for the second academic period are

(Footnote continued on next page…)

guarantee. *See, e.g.*, *Hansen v. Unemployment Compensation Board of Review*, 422 A.2d 707, 709 (Pa. Cmwlth. 1982) ("Section 402.1 does not require a guarantee, but only a reasonable assurance of re-employment, and the [B]oard, based on its examination of the relevant facts, must make that determination. Here[in,] we cannot find any evidence to suggest that the school would deviate from its list when selecting substitute teachers."). It further contends the regulation deems an offer bona fide if the claimant normally returns for the next academic term, and Claimant's 15-year history of returning satisfies Section 65.161(b)(2). The Board notes that UIPLs are nonbinding administrative guidance. *See Glassmire v. Unemployment Compensation Board of Review*, 856 A.2d 269, 275 (Pa. Cmwlth. 2004).

> not substantially less than the terms and conditions of the individual's employment in the first academic period.
>
> (b) For the purposes of subsection (a), an offer of employment is not bona fide if both of the following conditions exist:
>
> > (1) The educational institution or educational service agency does not control the circumstances under which the individual would be employed.
> >
> > (2) The educational institution or educational service agency cannot provide evidence that the individual or similarly situated individuals normally perform services in the second academic period.
>
> (c) For the purposes of subsection (a), economic terms and conditions of employment include wages, benefits and hours of work.

34 Pa. Code §65.161(a)-(c); *see also Slippery Rock Area School District v. Unemployment Compensation Board of Review*, 983 A.2d 1231, 1244-45 (Pa. 2009) ("For these reasons, we hold that the Department's Regulation, 34 Pa. Code §65.1[6]1 was a valid exercise of the Department's power to promulgate legislative regulations.").

As indicated, our review is limited to determining whether an error of law was committed, constitutional rights were violated, or findings are supported by substantial evidence. The Board's findings in this matter are clearly supported by substantial evidence. Claimant received an offer of employment for the Fall 2024 term; Employer's submission stated Claimant worked under a renewable contract; and Claimant's own testimony confirmed a long pattern of returning each fall. *See* CR at 36-38, 135, 140. Claimant did, in fact, return in August 2024 under the same terms.

Under Pennsylvania precedent, reasonable assurance does not require an absolute guarantee or the absence of contingencies. As stated, *Hansen* recognizes that a reasonable expectation of continued employment suffices. The Department's regulation at 34 Pa. Code §65.161 is controlling and was upheld as a valid legislative rule in *Slippery Rock Area School District*. Under Section 65.161(b)(2), because Claimant historically returned to work after summer recess for 15 years, the offer of employment is considered bona fide even if contingencies were present.[5]

In addition, Claimant's reliance on UIPL 05-17 is unavailing. UIPLs do not bind this Court or the Board. *See Glassmire*, 856 A.2d at 275 ("To assist [s]tate agencies on the interpretation of reasonable assurance, [the federal Department of Labor] issued UIPL 4–87. However, UIPL 4–87 is not binding

[5] Although Claimant raises policy-based arguments regarding compensation levels for adjunct lecturers, such considerations cannot override the plain statutory language of Section 402.1 or established precedent applying reasonable-assurance principles to instructional employees. Rather, such an argument is properly voiced to Claimant's representatives in the General Assembly. *See, e.g.*, *Crawford v. Commonwealth*, 326 A.3d 850, 857 (Pa. 2024) ("It is the chief function of the General Assembly to set public policy. 'The domain of the judiciary is in the field of the administration of justice under the law; it interprets, construes[,] and applies the law.' It is axiomatic that, in exercising our power of judicial review, we cannot use it as a means to substitute our own public policy judgments for those of the General Assembly.") (citations and footnote omitted).

authority upon this Court or the agencies of this Commonwealth since it is merely an administrative interpretation of federal law.").

Further, Employer's absence at the hearing does not preclude reliance on documentary evidence and Claimant's testimony. The Board was entitled to rely on Employer's response to Claimant's petition and the remainder of the uncontested record. *See also Perminter v. Unemployment Compensation Board of Review*, 426 A.2d 245, 247 (Pa. Cmwlth. 1981) ("[T]he Board itself has a duty to protect the unemployment compensation fund from ineligible claimants and to investigate all the facts in a given case. *DiGiovanni v. Unemployment Compensation Board of Review*, [404 A.2d 449 (Pa. Cmwlth.] 1979)."). Because the Board's decision faithfully applied Section 402.1, the Department's regulation, and controlling precedent, and because substantial evidence supports its factual determinations, we discern no error.

Accordingly, the Board's order is affirmed.

MICHAEL H. WOJCIK, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert A. Naborn,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 480 C.D. 2025
	:	
Unemployment Compensation Board of Review,	:	
	:	
Respondent	:	

O R D E R

AND NOW, this 18th day of November, 2026, the order of the Unemployment Compensation Board of Review dated March 10, 2025, is **AFFIRMED**.

_____

MICHAEL H. WOJCIK, Judge