*State of New York*
*Supreme Court, Appellate Division*
*Third Judicial Department*

Decided and Entered: May 30, 2024 CV-23-0618

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In the Matter of the Claim of DIANE ALONGI,
Appellant.

THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,
Respondent.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,
Respondent.

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Calendar Date: April 23, 2024

Before: Pritzker, J.P., Reynolds Fitzgerald, Ceresia, McShan and Mackey, JJ.

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*Diane Alongi*, New York City, appellant pro se.

*Letitia James, Attorney General*, New York City (*Camille J. Hart* of counsel), for Commissioner of Labor, respondent.

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Mackey, J.

Appeal from a decision of the Unemployment Insurance Appeal Board, filed October 25, 2022, which, upon reopening and reconsideration, adhered to its prior decision ruling that claimant was ineligible to receive unemployment insurance benefits because she was unable to file a valid original claim.

Claimant worked as a per diem substitute paraprofessional for the employer beginning in 2012 and was notified of work available at the employer's public schools

through a registry known as SubCentral. SubCentral maintained a record of, among other things, each substitute paraprofessional's availability and notified such individuals of available work via an automated telephone system, its website and/or administrator-initiated assignments, the latter of which occurred through direct contact with a school administrator who, in turn, would enter the assignment into SubCentral.

The 2020-2021 academic year consisted of 182 days; claimant was offered 182 days of work through SubCentral and worked 144 days as a per diem substitute paraprofessional – accepting all of her assignments through the direct-contact method. At the start of the academic year, the pay rate was $151.82 per day and, beginning May 14, 2021, the pay rate increased to $166.67 per day pursuant to a contract applicable to all per diem substitute paraprofessionals in the school district.

By letter dated June 17, 2021, claimant was advised that SubCentral would continue to be used to grant her assignments during the upcoming 2021-2022 academic year and that the "economic terms and conditions" for the impending school year were expected "to be substantially the same" as had existed in the preceding year. Although the letter did not specify claimant's rate of pay, such rate was governed by the existing contract ($166.67/day), and claimant was expressly advised that the employer anticipated that "there [would] be as much day-to-day work for [s]ubstitute [p]araprofessionals during the 2021-2022 [s]chool [y]ear, as was available in the 2020-2021 [s]chool [y]ear." Claimant acknowledged receiving was what denominated as a reasonable assurance letter, electronically signed such letter on June 28, 2021 and returned to work during the 2021-2022 academic year.

By notice of determination dated November 10, 2021, the Department of Labor found claimant to be ineligible to receive unemployment insurance benefits because she had a reasonable assurance of performing services as a per diem substitute paraprofessional during the 2021-2022 academic year.[1] When the employer failed to appear for the scheduled hearing, an Administrative Law Judge overruled the initial determination. The employer's subsequent application to reopen was granted and, following a hearing, the initial determination was sustained and claimant was found to be ineligible for benefits because she had received a reasonable assurance of performing services for the employer in the upcoming academic year. Upon claimant's administrative

[1] It is not clear from the record when claimant applied for unemployment insurance benefits. The notice of determination found claimant to be ineligible effective June 28, 2021, but claimant purports to have applied for benefits in 2020.

appeal, the Unemployment Insurance Appeal Board affirmed. By decision filed October 25, 2022, the Board granted claimant's application for a reopening and reconsideration and adhered to its prior decision, and this appeal by claimant ensued.[2]

"Labor Law § 590 (11) . . . precludes nonprofessionals who are employed by educational institutions from receiving unemployment insurance benefits during the time between two academic periods if they have received a reasonable assurance of continued employment" (*Matter of Enman [New York City Dept of Educ.-Commissioner of Labor]*, 161 AD3d 1368, 1369 [3d Dept 2018] [citations omitted], *lv denied* 32 NY3d 902 [2018]; *accord Matter of Johnson [Commissioner of Labor]*, 222 AD3d 1115, 1118 [3d Dept 2023]). "A reasonable assurance has been interpreted as a representation by the employer that substantially the same economic terms and conditions will continue to apply to the extent that the claimant will receive at least 90% of the earnings received during the first academic period" (*Matter of Overacker [Churchville-Chili Cent. Sch. Dist.-Commissioner of Labor]*, 213 AD3d 1127, 1128 [3d Dept 2023] [internal quotation marks and citations omitted]; *accord Matter of Johnson [Commissioner of Labor]*, 222 AD3d at 1119; *Matter of Barnett [Broome County Community Coll.-Commissioner of Labor]*, 182 AD3d 763, 763-764 [3d Dept 2020], *lv denied* 35 NY3d 1077 [2020]). "Notably, the question of whether a claimant received a reasonable assurance of reemployment for the following academic year is a question of fact and, if the Board's findings in that regard are supported by substantial evidence, they will not be disturbed" (*Matter of Gracy [Commissioner of Labor]*, 182 AD3d 871, 872 [3d Dept 2020] [internal quotation marks and citations omitted]; *see Matter of Overacker [Churchville-Chili Cent. Sch. Dist.-Commissioner of Labor]*, 213 AD3d at 1128).

Contrary to claimant's assertion, a reasonable assurance of reemployment is not a guarantee (*see Matter of Enman [New York City Dept. of Educ.-Commissioner of Labor]*, 161 AD3d at 1370), and the June 2021 letter sent to claimant upon the employer's behalf clearly indicated that work would be available for claimant in her capacity as a per diem substitute paraprofessional during the upcoming 2021-2022 academic year and that the "economic terms and conditions" for the impending school year were expected "to be substantially the same" as had existed in the preceding year (*see Matter of Gracy [Commissioner of Labor]*, 182 AD3d at 872-873). This letter, which claimant received and electronically signed, further advised that claimant's name would remain on

[2] Claimant did not appeal from the denial of her subsequent applications for a reopening and reconsideration, and claimant was not charged with a recoverable overpayment of the benefits she received.

SubCentral for purposes of receiving her assignments. Such proof, "together with the testimony concerning the per diem rate of pay for the [2021-2022] academic year and number of potential work days available, provides substantial evidence supporting the Board's finding that the employer provided claimant with a reasonable assurance of continued employment" (*id.* at 873; *see Matter of Johnson [Commissioner of Labor]*, 222 AD3d at 1119; *Matter of Overacker [Churchville-Chili Cent. Sch. Dist.-Commissioner of Labor]*, 213 AD3d at 1128-1129; *Matter of Enman [New York City Dept. of Educ.-Commissioner of Labor]*, 161 AD3d at 1370-1371; *Matter of Cieszkowska [Commissioner of Labor]*, 155 AD3d 1502, 1502-1503 [3d Dept 2017]). Accordingly, we discern no basis upon which to disturb the Board's decision. Claimant's remaining arguments, to the extent not specifically addressed, have been examined and found to be lacking in merit.

Pritzker, J.P., Reynolds Fitzgerald, Ceresia and McShan, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

Robert D. Mayberger
Clerk of the Court