



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: DECEMBER 29, 2020

IN THE MATTER OF:

Appeal Board No. 612846 A

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determinations, disqualifying the claimant from receiving benefits, effective January 12, 2018, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant prior to January 12, 2018, cannot be used toward the establishment of a claim for benefits; charging the claimant with an overpayment of \$6,384.00 in benefits recoverable pursuant to Labor Law § 597 (4); reducing the claimant's right to receive

future benefits by eight effective days; and charging a civil penalty of \$957.60 on the basis that the claimant made a willful misrepresentation to obtain benefits.

The Administrative Law Judge held combined hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor. By decision filed December 3, 2018, (018-20867), the Administrative Law Judge sustained the initial determinations.

The claimant appealed the Judge's decision to the Appeal Board.

By combined decisions filed March 13, 2019 (Appeal Board Nos. 604501, 604502 and 604503), the Appeal Board affirmed the Judge's combined decision and sustained the initial determinations. The claimant, then, appealed the Board's decision to the Appellate Division of the Supreme Court, Third Department. By order entered April 23, 2020 (503142 Slip Opinion), the combined decision of the Appeal Board was affirmed as to the initial determinations of misconduct

and overpayment and reversed as to the initial determinations of wilful misrepresentation and civil penalty. It was then remitted to the Appeal Board for further proceedings not inconsistent with the Court's decision.

The Appeal Board, on its own motion pursuant to Labor Law § 534, has now reopened and reconsidered Appeal Board Nos. 604502 and 604503, filed March 13, 2019, which affirmed the decisions of the Administrative Law Judge, and sustained the initial determinations, charging the claimant with an overpayment of \$6,384.00 in benefits recoverable pursuant to Labor Law § 597

(4); reducing the claimant's right to receive future benefits by eight effective days; and charging a civil penalty of \$957.60 on the basis that the claimant made a willful misrepresentation to obtain benefits.

Upon consideration of the entire record, the Board makes the following

**FINDINGS OF FACT:** The claimant was employed as a paraprofessional for the employer, a municipal school district, for over twelve years, full-time. The claimant did not like her coworker. She found his wallet on a chair and contemplated throwing the wallet out. Instead, she hid the wallet in the bathroom behind a pipe. Prior to the claimant revealing the location of the wallet, on January 10, 2018, the claimant was arrested for credit card fraud and theft, grand larceny in the fourth degree. The employer suspended the claimant as of January 11, 2018, due to her arrest.

The claimant applied for unemployment insurance benefits on January 18, 2018, and her claim was made effective on January 11, 2018. On or about April 2018, the claimant was convicted of New York Penal Law § 145 and New York Penal Law

§ 240.20, having pled guilty to both criminal mischief in the fourth degree

and disorderly conduct. She was issued an adjudication in contemplation of dismissal and required to perform five days of community service.

When interviewed by a representative from the Department of Labor on May 14, 2018, however, the claimant stated, although arrested on the charge of larceny in the fourth degree, she was not "guilty of any charges." The claimant provided the Department of Labor with a court document which indicated, however, that the claimant had already pled guilty to criminal mischief in the

fourth degree and disorderly conduct. The Court had ordered the claimant to complete community service. The claimant misunderstood what had transpired and thought that there was to be further Court proceedings as to her guilt in July. The claimant received \$6,384.00 in unemployment insurance benefits thereafter.

OPINION: There having been no appeal therefrom, it remains the law of the case that the claimant committed misconduct in the course of her employment. Accordingly, we conclude that the claimant was separated from her employment under disqualifying circumstances. As the claimant was separated from her employment under disqualifying circumstances, she was not entitled to the unemployment insurance benefits which she received and was overpaid unemployment insurance benefits.

The credible evidence further establishes that the claimant's statement to the Department of Labor, on May 14, 2018, "No, I am not guilty of any charges" was factually false. The claimant had, as of April 2018, pled

guilty to criminal acts and been sentenced to community service. Hence, the claimant was guilty of criminal acts. As a result, her statements to the contrary, which were untrue, therefore render the overpayment recoverable.

The credible evidence fails to establish, however, that the claimant's statement was a wilful misrepresentation to obtain benefits. A "willful" false statement or misrepresentation is one which was made knowingly, intentionally or deliberately." As per the Appellate Division's decision, the claimant's statement reflects a misunderstanding on her part, as she indicates that the court would not be determining her guilt until July 2018. As the claimant misunderstood what had occurred, her factually false statement (as to her not being guilty) was not made "knowingly, intentionally or deliberately" to obtain benefits. Hence, we find that the claimant cannot be said to have made a wilful misrepresentation to obtain benefits. In the absence of a wilful misrepresentation to obtain benefits, we find that no forfeit penalty may be imposed. We further note that in the absence of a forfeit penalty, no civil penalty may be imposed.

DECISION: The decisions of the Administrative Law Judge are rescinded.

The initial determination, charging the claimant with an overpayment of \$6,384.00 in benefits recoverable pursuant to Labor Law § 597 (4), is

sustained.

The initial determinations, reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$957.60 on the basis that the claimant made a willful misrepresentation to obtain benefits, are overruled.

The claimant is denied benefits with respect to the issues decided herein.  
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MICHAEL T. GREASON, MEMBER  
PW:ER