



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. 612912

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 612910, 612911 and 612912, the claimant appeals from the decisions of the Administrative Law Judge filed November 12, 2020, which sustained the initial determinations disqualifying the claimant from receiving benefits, effective March 9, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$5,434 in benefits recoverable pursuant to Labor Law § 597 (4);

charging the claimant with an overpayment of \$209 in Pandemic Emergency Unemployment Compensation (PEUC) repayable pursuant to § 2107 (e) (2) of the

Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of \$9,600 in Federal Pandemic Unemployment Compensation (FPUC) repayable pursuant to § 2104 (f) (2) of the Coronavirus

Aid, Relief, and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$815 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, testimony was taken. There were appearances by the claimant and on behalf of the employer and the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a further combined hearing

on the issues of whether the claimant voluntarily quit without good cause, whether there have been recoverable overpayments of regular unemployment benefits, PEUC benefits, and FPUC benefits, and whether the claimant made a wilful misrepresentation when she applied for benefits. We have determined that the record was not adequately developed on these issues, and that a further hearing should be held to take additional testimony and other evidence into the record. The parties shall be questioned further regarding the circumstances of the claimant's separation from employment and what she knew or should have known at the time of her subsequent filing for unemployment benefits.

Towards that end, the employer shall produce copies of the website postings and text messages the owner testified were sent to his employees, including the claimant, about providing the days and hours they wanted to come back to work. This shall include evidence of the dates of the postings and messages, and evidence that the text messages were sent to the claimant. The employer shall also produce the owner's spouse, Susan Chamoun, who shall be questioned about the content of any communication she had with the claimant, either in person on the phone, on or after March 13, 2020.

Further, and in light of the owner's testimony that he had received PPE loans to ensure he could continue to operate his business and pay employees, the owner shall be confronted with the letter sent to the Department of Labor, dated May 6, 2020, indicating that the employer received no government help or loans. The owner shall be questioned regarding any contradiction between the statements in this letter and his testimony.

The text messages, website postings, and the May 6, 2020 letter shall be received into evidence after appropriate confrontation and opportunity for objection.

The hearing Judge shall receive other testimony and evidence necessary to decide the issues.

Now, based on all of the foregoing, it is

ORDERED, that in Appeal Board Nos. 612910, 612911 and 612912, the decisions of the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the cases shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above actions to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions on the issues of voluntary separation from employment without good cause, recoverable overpayment of regular unemployment insurance benefits, recoverable overpayments of Pandemic Emergency Unemployment Compensation (PEUC) and Federal Pandemic Unemployment Compensation (FPUC), willful misrepresentation to obtain benefits and civil penalty, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER