



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 30, 2020

IN THE MATTER OF:

Appeal Board No. 612946

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 612944, 612945, and 612946, the Appeal Board, on its motion pursuant to Labor Law § 620.3, has reopened and reconsidered the

decisions of the Administrative Law Judge filed August 4, 2020, which overruled the initial determinations holding the claimant ineligible to receive benefits, effective October 7, 2019 through October 27, 2019, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$1,040 in benefits recoverable pursuant to Labor Law § 597

(4); and reducing the claimant's right to receive future benefits by 24 effective days and charging a civil penalty of \$156 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. We have determined that additional testimony and evidence is necessary before a decision is rendered on all the issues. While the initial determinations are based, in part, on the premise that the claimant earned over the statutory limit of \$504 each week and did not report it, no testimony or evidence was taken with respect to whether the claimant was asked about this when he certified for benefits or how he answered that question if he was in fact asked. At the remand hearing, the Administrative Law Judge shall question the claimant about this.

The Commissioner of Labor is also directed to be represented at the remand hearing. The representative should be prepared to state the Commissioner's position on why the days worked in this matter were estimated and provide testimony as to whether the certification record previously entered into evidence as Exhibit 4 is a document kept in the course of business. The representative should be afforded an opportunity to object to the documents entered into evidence at the prior hearing and to cross-examine the claimant's testimony.

The parties may produce any other relevant witnesses or documents. The judge may take any other testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge are rescinded; and it is further

ORDERED, that the case is remanded to the Hearing Section to hold a combined hearing on all 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 action 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, 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.

GERALDINE A. REILLY, MEMBER