



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 06, 2021

IN THE MATTER OF:

Appeal Board No. 613105

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 6103104, 613105, and 613106, the claimant appeals from the decisions of the Administrative Law Judge filed November 17, 2020, insofar as they sustained the initial determinations disqualifying the claimant from receiving benefits, effective March 17, 2020, on the basis that the claimant voluntarily separated from employment without good cause, charging the claimant with overpayments of \$5,644.00 in benefits recoverable pursuant to Labor Law § 597 (4) and \$9,600.00 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 \$846.60 on the basis that the claimant made a willful misrepresentation to obtain benefits .

The Administrative Law Judge held combined telephone conference hearings at which testimony was taken. There were appearances by the claimant and on behalf of the employer.

Our review of the record reveals that the case should be remanded to hold a hearing. The record was not sufficiently developed on the determinations that the claimant voluntarily separated from employment

without good cause and made a willful misrepresentation to obtain benefits.

The parties should have another opportunity to submit additional testimony and other evidence on this issue.

The employer is directed to produce Saurabh Chanbiwalla as a witness at the hearing.

The claimant is directed to make sure that on the date of the hearing he has a working telephone so that the Judge will be able to contact him.

The parties shall be questioned regarding the conditions at the plant where the claimant worked, including the nature of the claimant's job duties, whether protective clothing, including masks or other protective gear, was available to the employees, and whether there were any outbreaks of COVID-19 at the plant. The claimant shall be questioned further regarding his reasons for not reporting to work and why he considered it necessary to remain at home, including the significance of his comment about "small children" and who he was referring to when he stated that "he" told him to stay home.

The complete application for benefits shall be entered into evidence, including the page showing the answer given as the reason for the claimant's separation from employment.

The claimant shall be given an opportunity to cross-examine Saurabh Chanbiwalla on his testimony given at the hearing held November 16, 2020.

The Judge may also take any other and further testimony or other evidence that may be necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge , insofar as it sustained the initial determinations, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, 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 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 a new decision, on the issues, 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.

JUNE F. O'NEILL, MEMBER