



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 07, 2021

IN THE MATTER OF:

Appeal Board No. 616408

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive Mixed Earner Unemployment Compensation (MEUC). The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed June 9, 2021 (), the Administrative Law Judge overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. In light of the specific contention made by the Commissioner of Labor for the first time on appeal, the parties shall be given another opportunity to present testimony and other evidence on the issue of the claimant's eligibility for MEUC.

The Commissioner of Labor is directed to be represented at the remand hearing to present its position on whether the claimant's earnings, as reported on Schedule C of his 2019 federal income tax return, were earnings from employment or self-employment, and shall produce a witness prepared to present this position.

The Commissioner of Labor's witness shall also be prepared to establish and

explain, by testimony and other evidence, what wages were used to determine the claimant's weekly benefit rate.

The claimant shall be given the opportunity to question any witness produced by the Commissioner's representative.

All relevant documents produced shall be received into evidence after the appropriate opportunity for confrontation and objection.

Failure to produce the evidence directed may result in the hearing Judge or the Appeal Board taking an adverse inference against the party not in compliance.

The hearing Judge may receive any other evidence necessary to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further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 issue, 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 issue of the claimant's eligibility for Mixed Earner Unemployment Compensation (MEUC), 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.

MARILYN P. O'MARA, MEMBER