



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: OCTOBER 08, 2021

IN THE MATTER OF:

Appeal Board No. 617218

PRESENT: JUNE F. O'NEILL, 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 July 23, 2021 (), the Administrative Law Judge granted the claimant's application to reopen 021-19344, and overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board, insofar as it overruled the initial determination holding the claimant ineligible to receive Mixed Earner Unemployment Compensation (MEUC). 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 documents submitted by the claimant on appeal, and the contentions made by the Commissioner of Labor on appeal, the parties shall be given an additional opportunity to provide testimony and other evidence on the issue of the claimant's eligibility for MEUC benefits.

At the further hearing, the claimant's tax return for 2019, including Form 1040 and Schedule C, which was submitted by the claimant after the previous hearing, shall be received into evidence, after the appropriate confrontation and opportunity for objection. The claimant shall also produce evidence that

this return was filed with the Internal Revenue Service.

In addition, the Commissioner of Labor shall be represented at the further hearing, and shall provide testimony and other evidence to establish the type of unemployment insurance benefits the claimant was receiving in connection with his claim (i.e., whether he was receiving regular unemployment benefits or Pandemic Unemployment Assistance). Further, the representative shall be prepared to present the Commissioner's position on whether the type of benefits the claimant received impacts his eligibility for supplement benefits under the MEUC program.

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

Now, based on all the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as it overruled the initial determination holding the claimant ineligible to receive Mixed Earner Unemployment Compensation (MEUC), 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 of the claimant's eligibility to receive MEUC benefits, 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, 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 to receive MEUC benefits, 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