



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 18, 2021

IN THE MATTER OF:

Appeal Board No. 617373

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant, a non-professional employee of an educational institution, should be held ineligible to receive benefits between two successive academic terms because the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (11). The Commissioner of Labor objected that the hearing request was not made within the time allowed by statute.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard on the Commissioner of Labor's timeliness objection and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed April 21, 2021 (), the Administrative Law Judge overruled the Commissioner of Labor's timeliness objection, sustained the employer's objection, and overruled the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

We have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made with respect to overruling the Commissioner of Labor's timeliness objection. The findings of fact and the opinion of the Administrative Law Judge, insofar as they concern overruling the Commissioner of Labor's timeliness objection, are fully supported by the record and, therefore, are adopted as the findings of fact

and the opinion of the Board.

Our review of the record, however, reveals that the case should be remanded to hold a hearing concerning the employer's objection that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (11). The Judge did not

provide an opportunity to the claimant to challenge or rebut the bona fides of the employer's assertion of reasonable assurance. Specifically, the Judge did not ask the claimant if she had any reason to think she would not work as many days in the 2020-2021 school year as in the 2019-2020 school year.

DECISION: The decision of the Administrative Law Judge, insofar as it overruled the Commissioner of Labor's timeliness objection, is affirmed.

The decision of the Administrative Law Judge, insofar as it sustained the employer's objection and overruled the initial determination, is rescinded.

The Commissioner of Labor's timeliness objection is overruled.

Now, based on all of the foregoing, it is

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 employer's objection that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590

(11), only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issue of the employer's objection that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (11), only; 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 remanded issues only, 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