



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 10, 2022

IN THE MATTER OF:

Appeal Board No. 622875

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive benefits, effective March 16, 2020, on the basis that the claimant was not available for employment. The claimant requested a hearing. 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 and at which testimony was taken. There were appearances by the claimant. decision filed April 8, 2022 (), the Administrative Law Judge sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determination.

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

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant's primary language is Bengali, but he has a limited proficiency in English. The Department of Labor mailed English and Bengali copies of the initial determination to the claimant on August 28, 2020. He received the initial determination in English in mid-September 2020 but did not receive the copy of the initial determination in Bengali. The claimant did not understand most of the English copy of the

initial determination and did not see the information about requesting a hearing. The claimant requested the hearing by letter dated December 23, 2021.

OPINION: The credible evidence establishes that the claimant's request for a hearing was not made within the statutory time limit. The claimant's native language is Bengali, but the claimant only received the initial determination in English. As the claimant did not receive the initial determination in his native language and did not understand most of the English version that he did receive, the claimant was not on notice that he had to request a hearing within 30 days. Accordingly, the timeliness objection is overruled.

Our review of the record, however, reveals that the case should be remanded to hold a hearing concerning the issue of availability for work. The Judge did not take testimony and evidence regarding this issue. In light of our decision regarding the timeliness of the claimant's hearing request, testimony and evidence shall be taken from the parties regarding the merits of the claimant's availability for employment.

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

The Commissioner of Labor's timeliness objection is overruled.

The decision of the Administrative Law Judge, insofar as it continued in effect the initial determination, is rescinded.

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 availability, 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 availability, 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 issue 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.

JUNE F. O'NEILL, MEMBER