



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 05, 2022

IN THE MATTER OF:

Appeal Board No. 623251

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective November 26, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by NEW YORK CITY HEALTH & prior to November 26, 2021, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held hearings at which testimony was taken. There was an appearance by the claimant. By decision filed April 22, 2022 (), the Administrative Law Judge sustained the initial determination.

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

Our review of the record reveals that the case should be remanded to hold a hearing. The parties are hereby on notice that the Judge shall consider the issue of voluntary leaving of employment without good cause, on the basis that the claimant refused the COVID-19 vaccine, and/or pursuant to the theory of provoked discharge, where an employee voluntarily engages in conduct which transgresses a legitimate known obligation that leaves the employer no choice but to terminate the employment relationship. (See Matter of DeGrego, 39 NY2d 180 (3rd Dept. 1975).

The parties may produce any further witnesses or documents that may be relevant. The Judge may take any other testimony and evidence necessary to

decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, is, rescinded; and it is further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 voluntary leaving of employment without good cause, 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, 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