



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: JULY 10, 2019

IN THE MATTER OF: Appeal Board No. 606128

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 606126, 606127, 606128, 606129, 606130 and 606131, the claimant and the Commissioner of Labor appeal from the decisions of the Administrative Law Judge filed April 5, 2019, which overruled the Commissioner of Labor's timeliness objection, overruled the initial determinations disqualifying the claimant from receiving benefits, effective June 14, 2011, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$9,738.50 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right to receive future benefits by 12 effective days on the basis that the claimant made willful misrepresentations to obtain benefits; and modified the initial determinations holding the claimant ineligible to receive benefits, effective May 12, 2011 through June 13, 2011, on the basis that the claimant was not totally unemployed; charging the claimant

with an overpayment of \$913.50 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right to receive future benefits by 48 effective days on the basis that the claimant made willful misrepresentations to obtain benefits, to be effective May 12, 2011 through May 17, 2011, and, as so modified, sustained the initial determinations of lack of total unemployment, recoverable overpayment and willful misrepresentation.

Our review of the record reveals that the case should be remanded to hold a hearing. The record was not adequately developed with respect to the Commissioner of Labor's timeliness objection. At the further hearing, the Judge shall confront the parties with the claimant's hearing request and the date of that request, and shall take the claimant's hearing request into evidence. The Judge shall question the claimant with respect to whether he advised the Department of Labor of his new address after he moved from the address to which the notices of determination were mailed, as well as the date or approximate when he learned that the Department of Labor was seeking to recover an

overpayment of benefits from him, how he learned that he could request a hearing, and why he requested a hearing when he did. The claimant shall be asked whether he at any time suffered from any physical condition or mental incapacity that prevented him from requesting a hearing. The parties shall be afforded an opportunity to present additional relevant and material testimony and evidence. The Judge shall take such further testimony and evidence as may be necessary to complete the record.

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 issues of the Commissioner of Labor's timeliness objection and the initial determinations of voluntary separation from employment without good cause, lack of total unemployment, recoverable overpayment, and willful misrepresentation to obtain 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, 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 issues of the Commissioner of Labor's timeliness objection and the initial determinations of voluntary separation from employment without good cause, lack of total unemployment, recoverable overpayment, and willful misrepresentation to obtain benefits, upon due notice to all parties and their representatives, 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