



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 11, 2019

IN THE MATTER OF: Appeal Board No. 606161

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 606160 and 606161, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed April 1, 2019, insofar as they overruled the initial determinations charging the claimant with an overpayment of \$1,708.00 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$329.40 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer and the Commissioner of Labor.

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

FINDINGS OF FACT: The claimant filed a claim for benefits on January 29, 2018. After filing his claim, the claimant worked as a carpenter for a construction company from May 7 through June 21, 2018, at which time he voluntarily quit this job without good cause. The claimant did not claim benefits during most of the period of his employment. The claimant resumed claiming benefits on July 7, 2018. At that time, the claimant was asked

whether his break in claim was due to employment. The claimant answered "no" to this question. The claimant had an opportunity to review his responses and make corrections before completing his certification. On the page to review his responses, a section labeled "Break In Claim," showed that the claimant was certifying "I have not claimed benefits since 5/7/2017 for a reason other than work." The claimant submitted this certification. He subsequently received \$1,708.00 in benefits.

OPINION: The credible evidence establishes that on July 7, 2018, the claimant certified that his break in claim during the preceding two months was not due to employment.

Although the claimant initially testified that he reported that he worked for this employer and that his job ended due to lack of work, the claimant changed his testimony when confronted with the Department of Labor's documentation. He testified that he no longer remembered his certifications, and said he was not disputing the documents' accuracy. We therefore accept as more credible the Department of Labor's documentation, which is consistent with the claimant's later testimony. We therefore find that the claimant certified that he did not work. This certification was factually false and had the effect of preventing the Department from investigating the circumstances under which his employment ended. In effect, the claimant concealed the fact that he quit his job. Further, based on his false certification, the claimant received \$1,708.00 in benefits to which he was not entitled. These benefits constitute an overpayment and are recoverable.

The credible evidence further establishes that, when the claimant certified that his break in claim was not due to employment, the claimant knew that he had worked. Therefore, the claimant's certification was a willful misrepresentation. The willful misrepresentation deprived the Department of the opportunity to discover that he had quit, and caused the claimant to receive an overpayment of benefits. Accordingly, we further conclude that the claimant is subject to the forfeit penalty and civil monetary penalty.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determinations, charging the claimant with an overpayment of \$1,708.00 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$329.40 on the basis that the claimant made a willful misrepresentation to obtain benefits, are sustained.

The claimant is denied benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER