



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 18, 2020

IN THE MATTER OF:

Appeal Board No. 611757

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 611757, 611758, and 611759, the Department of Labor issued the initial determinations holding the claimant ineligible to receive benefits, effective December 2, 2019 through January 12, 2020 and December 8, 2019 through January 26, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with overpayments of \$335 and \$251.25.00 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the

claimant's right to receive future benefits by twenty four effective days and charging a civil penalty of \$100.00 on the basis that the claimant made willful misrepresentations to obtain benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed June 16, 2020 (A.L.J. Case Nos. , 020-06842, and 020-06843), the Administrative Law Judge sustained the initial determinations holding the claimant ineligible to receive benefits on the basis that the claimant was not totally unemployed and charging the claimant with an overpayment of \$335.00 in benefits recoverable pursuant to Labor Law § 597 (4); and modified, then

sustained, the initial determination of wilful misrepresentation to reduce the claimant's right to receive future benefits to eight effective days only with a civil penalty of \$100.00. The Administrative Law Judge did not rule on the initial determination charging the claimant with an overpayment of \$251.25 in benefits recoverable pursuant to Labor Law § 597 (4).

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. Further testimony and evidence should be taken on all the issues in this matter. We have determined that the Commissioner of Labor should be represented at the hearing for the purpose of clarifying the basis for recovering the overpayments in question. The Commissioner of Labor is also directed to produce a copy of the claimant's benefit ledger transcript and should be prepared to offer testimony regarding the amount of benefits that the claimant received during each of the weeks under review. The benefit ledger transcript should then be entered into evidence after the appropriate confrontation. Further, because the claimant contended for the first time at the hearing that he had reported all of the days that he worked during the weeks in question, the Commissioner's representative shall be given an opportunity to produce testimony and evidence in rebuttal.

In addition, more testimony and evidence should be taken to establish the exact dates upon which the claimant worked or was in paid training, or sent home and paid for four hours of work, in the weeks under review. Further testimony and evidence should also be taken with respect to when and how the claimant was notified that he would be paid for attending training or sent home due to a lack of work, and when he received such payment. To that end, each party is directed to produce documentation of these dates and should be questioned in further detail about the foregoing at the remand hearing.

An opportunity to cross-examine the claimant's testimony from the prior hearing should be offered to all parties that did not appear at same. Those parties should contact the Hearing Section in advance of the hearing to make arrangements to review the claimant's testimony. Prior to the remand hearing, the parties are further directed to provide the Hearing Section and all other parties with copies of any documentation they have been directed to produce.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge are 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 all the issues in this matter, 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