



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: DECEMBER 02, 2020

IN THE MATTER OF:

Appeal Board No. 612499

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 612499, 612500 and 612501, the claimant appeals from the decisions of the Administrative Law Judge filed September 30, 2020, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective May 10, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$3,718 in benefits recoverable pursuant to Labor Law § 597 (4); charging the

claimant with overpayments in the total amount of \$7,200 in Federal Pandemic Unemployment Compensation (FPUC) repayable pursuant to § 2104 (f)(2) of the

Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$557.70 on the basis that the claimant made willful misrepresentations to obtain benefits.

The Administrative Law Judge held a combined 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 and on behalf of the employer.

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

**FINDINGS OF FACT:** The claimant was employed with this employer from January 2019 until March 20, 2020. On March 20, 2020, the claimant was laid off as a result of the pandemic. On March 20, 2020 the claimant filed her claim for UI benefits, which was made effective March 16, 2020. She established a weekly

benefit rate of \$286.

The claimant resides with her mother, an essential worker at a hospital and her eight-year-old sister. On May 1, 2020, the claimant's mother lost childcare for the claimant's eight-year-old sister. On May 2, 2020, the claimant began to provide childcare for her sister. The claimant continued to provide care for her sister to September 28, 2020.

On May 6, 2020, the claimant's prior employer sent the claimant a letter to return to work. The claimant declined the offer to return to work. The claimant did not return to work on May 6, 2020 because she was providing childcare for her sister.

For the weeks ending May 10, 2020 to August 3, 2020, the claimant certified for benefits and reported that she was ready, willing and able to work. The claimant received \$286 in regular unemployment insurance benefits (UI) and \$600 in Federal Pandemic Unemployment Compensation (FPUC) each week in this period of time. The claimant received a total of \$3,718 in regular benefits and \$7,200 in FPUC benefits.

OPINION: The credible evidence establishes that the claimant was not available for employment from May 10, 2020 to September 28, 2020, because she was providing childcare for her young sister. Only claimants who are ready, willing and able to immediately accept work are eligible to receive benefits. As the claimant was not available, she is not eligible for benefits during this period of time.

As the claimant is ineligible, the claimant was overpaid UI and FPUC benefits for the period beginning May 10, 2020 to September 28, 2020. The claimant's certification that she was ready, willing and able to work in each of these weeks, were willful misrepresentations to obtain benefits. The claimant's contention that she answered "zero" because she did not know that she was not available for work does not excuse her false answer, because the claimant was aware that she had an offer to return to work May 6, 2020 and she did not accept the offer because she was providing childcare for her sister. As a result, the UI overpayment is recoverable and the forfeit penalty of eight effective days and the civil penalty were properly imposed. The overpaid FPUC benefits are automatically repayable under Federal law.

However, the amount of the UI and FPUC overpayments - \$3,718 and \$7,200-

appear to have been calculated based on benefits paid to the claimant which include benefits paid during the the statutory week ending May 10, 2020. As the availability determination is effective May 10, 2020, benefits paid prior to May 10, 2020, were not overpaid. The matter is referred back to the Department of Labor for any necessary recalculation of the amount of UI, FPUC benefits and civil penalty.

DECISION: The decisions of the Administrative Law Judge are affirmed.

In Appeal Board No. 612499, 612500, and 612501, the initial determinations, holding the claimant ineligible to receive benefits, effective May 10, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$3,718 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with overpayments in the total

amount of \$7,200 in Federal Pandemic Unemployment Compensation (FPUC) repayable pursuant to § 2104 (f)(2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight

effective days and charging a civil penalty of \$557.70 on the basis that the claimant made willful misrepresentations to obtain benefits are sustained.

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

The matter is referred back to the Department of Labor for any necessary recalculation of the overpayments and the civil penalty.

RANDALL T. DOUGLAS, MEMBER