



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 23, 2021

IN THE MATTER OF:

Appeal Board No. 614798

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 614797 and 614798, the claimant appeals from the decisions of the Administrative Law Judge filed March 19, 2021, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 23, 2020, through June 14, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$5544.00 in benefits recoverable pursuant to Labor Law § 597

(4); and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$6600.00 recoverable pursuant to § 2104 (f)(2) of

the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020.

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

We have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made. The findings of fact and the opinion of the Administrative Law Judge, insofar as they concern the issues of Appeal Board Nos. 614797 and 614798 as to the initial determinations holding the claimant ineligible to receive benefits, effective March 23, 2020, through June 14, 2020, on the basis that the claimant was not totally unemployed; and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$6600.00 recoverable pursuant to § 2104 (f)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020, are adopted as the findings of fact and the opinion of the Board.

Our review of the record, however, reveals that the case should be remanded to hold a hearing concerning the issues in Appeal Board No. 614798, charging the claimant with an overpayment of \$5544.00 in benefits recoverable pursuant to Labor Law § 597 (4).

At the further hearing, the Commissioner of Labor is directed to produce a witness with first-hand knowledge as to the certification process online, to testify as to each and every screen presented to a claimant with multiple part-time employers from the point that the claimant signs on to the Department of Labor's website to certify for unemployment insurance benefits for a particular week through the successful completion of that certification, including what is observed as to each part-time employer and screens offered. Any documentary evidence, including screen shots of each screen presented, particularly in the case of multiple part-time employers, shall be produced at hearing for potential entry into the record after an opportunity for objection or comment.

At the further hearing, the Commissioner of Labor's witness and the claimant will then testify further as to what was observed upon signing on to the system, what was observed as to each part-time employer for whom the claimant worked during the relevant time period, any questions asked to each part-time employer during the certification process and whether a screen was offered, prior to the certification process, referring to a specific part-time employer, and if so, whether it was then possible to complete multiple certifications for the same week ending date for different employers in the case of multiple part-time employers. Any documentary evidence in support of such testimony shall be entered into the record after an opportunity for objection and comment.

DECISION: The combined decisions of the Administrative Law Judge, insofar as they sustained the initial determinations in Appeal Board Nos. 614797 and 614798, holding the claimant ineligible to receive benefits, effective March 23, 2020, through June 14, 2020, on the basis that the claimant was not totally unemployed; and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$6600.00 recoverable pursuant to § 2104

(f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of

2020, are affirmed.

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

The decision of the Administrative Law Judge, insofar as it sustained the initial determinations in Appeal Board Nos. 614798, charging the claimant with an overpayment of \$5544.00 in benefits recoverable pursuant to Labor Law § 597

(4) is rescinded.

Now, based on all of the foregoing, it is

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of recoverable overpayment, in Appeal Board Nos. 614798, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issues of recoverable overpayment, in Appeal Board Nos. 614798, only; and it is further

ORDERED, that the combined 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 remanded issues only, 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

Federal law provides that New York State can waive repayment of Pandemic Emergency Unemployment Compensation (PEUC), Federal Pandemic Unemployment Compensation (FPUC), Lost Wages Assistance (LWA), Mixed Earners Unemployment Compensation (MEUC) or Pandemic Unemployment Assistance (PUA) benefits overpaid to the claimant if the overpayment was not the claimant's fault and repayment would be contrary to equity and good conscience. For more

information on the overpayment waiver process and instructions to request a waiver, please visit the New York State Department of Labor's website, <https://dol.ny.gov/overpayment-waiver-and-appeal-process>.