



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. 614803

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 614799, 614800, 614801, the claimant appeals from the decisions of the Administrative Law Judge filed March 18, 2021, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective June 29, 2020, through August 16, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$2646.00 in benefits recoverable pursuant to Labor Law § 597

(4); charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$2400.00 recoverable pursuant to § 2104 (f)(2) of

the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Lost Wages Assistance benefits of \$900.00 recoverable pursuant to 44 CFR § 206.120 (f)(5); reducing the

claimant's right to receive future benefits by 56 effective days; and charging a civil penalty of \$396.90 on the basis that the claimant made a willful misrepresentation to obtain benefits.

In Appeal Board Nos. 614802, 614803 and 614804, the claimant appeals from the decisions of the Administrative Law Judge filed March 18, 2021, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective July 4, 2020 through July 5, 2020, on the basis that the claimant was on a paid holiday and vacation period; charging the claimant with an overpayment of \$252.00 in benefits recoverable pursuant to Labor Law § 597 (4); reducing the claimant's right to receive future benefits

by 16 effective days; and charging a civil penalty of \$100.00 on the basis that the claimant made a willful misrepresentation to obtain benefits.

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 as specified as follows. The findings of fact and the opinion of the Administrative Law Judge are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board, insofar as they concern the issues in Appeal Board Nos. 614799 and 614800, holding the claimant ineligible to receive benefits, effective June 29, 2020, through August 16, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$2400.00 recoverable pursuant to § 2104 (f)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Lost Wages Assistance benefits of \$900.00 recoverable pursuant to 44 CFR § 206.120 (f)(5); and in Appeal Board Nos. 614802, holding the

claimant ineligible to receive benefits, effective July 4, 2020 through July 5, 2020, on the basis that the claimant was on a paid holiday and vacation period.

Our review of the record, however, reveals that the case should be remanded to hold a hearing concerning the issues in Appeal Board Nos. 614800, 614801, 614803 and 614804, charging the claimant with an overpayment of \$2646.00 in benefits recoverable pursuant to Labor Law § 597 (4); reducing the claimant's

right to receive future benefits by 56 effective days; charging a civil penalty of \$396.90 on the basis that the claimant made a willful misrepresentation to obtain benefits; charging the claimant with an overpayment of \$252.00 in benefits recoverable pursuant to Labor Law § 597

(4); reducing the claimant's right to receive future benefits by 16 effective days; and charging a civil penalty of \$100.00 on the basis that the claimant made a willful misrepresentation to obtain benefits.

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. 614799, 614800 and 614802, holding the claimant ineligible to receive benefits, effective June 29, 2020, through August 16, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$2400.00 recoverable pursuant to § 2104

(f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Lost Wages Assistance benefits of \$900.00 recoverable pursuant to 44 CFR § 206.120 (f)(5); and

holding the claimant ineligible to receive benefits, effective July 4, 2020 through July 5, 2020, on the basis that the claimant was on a paid holiday and vacation period, 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. 614800, 614801, 614803 and 614804, charging the claimant with an overpayment of \$2646.00 in benefits recoverable pursuant to Labor Law § 597 (4); reducing the claimant's right to receive

future benefits by 56 effective days; charging a civil penalty of \$396.90 on the basis that the claimant made a willful misrepresentation to obtain benefits; charging the claimant with an overpayment of \$252.00 in benefits recoverable pursuant to Labor Law § 597 (4); reducing the claimant's right to

receive future benefits by 16 effective days; and charging a civil penalty of \$100.00 on the basis that the claimant made a willful misrepresentation to obtain benefits, are 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, willful misrepresentation and civil penalty in Appeal Board Nos. 614800, 614801, 614803 and 614804, 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, willful misrepresentation and civil penalty in Appeal Board Nos. 614800, 614801, 614803 and 614804, 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>.