



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: SEPTEMBER 15, 2021

IN THE MATTER OF:

Appeal Board No. 615962

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 615959 and 615960, the claimant appeals from the decisions of the Administrative Law Judge filed May 13, 2021, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 16, 2020 and ending June 17, 2020, on the basis that the claimant was not totally unemployed and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$4800.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020.

In Appeal Board Nos. 615961 and 615962, the claimant appeals from the decisions of the Administrative Law Judge filed May 13, 2021, which sustained the initial determinations holding, effective June 29, 2020 and ending September 6, 2020, that the wages paid to the claimant, a non-professional employee of an educational institution, cannot be used to establish a valid original claim during the period between two successive academic terms, on the basis that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590

(11); charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$2400.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1800.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5).

At the combined telephone conference hearings before the Administrative Law Judge, testimony was taken. There were appearances by the claimant and on

behalf of 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 with respect to the issues of ineligibility based upon the claimant being not totally unemployed and the related overpayment of \$4800.00 in Federal Pandemic Unemployment Compensation benefits. The findings of fact and the opinion of the Administrative Law Judge, insofar as they concern the issues of ineligibility based upon the claimant being not totally unemployed and the related overpayment of \$4800.00 in Federal Pandemic Unemployment Compensation benefits, are fully supported by the record and, therefore, 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 on the issues of whether, effective June 29 through September 6, 2020, the wages paid to the claimant, a non-professional employee of an educational institution, cannot be used to establish a valid original claim during the period between two successive academic terms, on the basis that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (11);

charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$2400.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1800.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5).

The employer should be questioned as to the total amount of wages earned by the claimant in the 2019-2020 school year; the breakdown of regular wages and wages earned through overtime and for trip time; and whether the employer anticipated having employment in the 2020-2021 school year in overtime and trip time and at what date the employer knew that it would have this employment.

**DECISION:** The decisions of the Administrative Law Judge, insofar as they sustained initial determinations holding the claimant ineligible to receive benefits, effective March 16, 2020 and ending June 17, 2020, on the basis that the claimant was not totally unemployed and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$4800.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020, are affirmed.

The decisions of the Administrative Law Judge, insofar as they sustained the initial determinations holding, effective June 29, 2020 and ending September 6, 2020, that the wages paid to the claimant, a non-professional employee of an educational institution, cannot be used to establish a valid original claim during the period between two successive academic terms, on the basis that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (11);

charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$2400.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1800.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), are rescinded.

In Appeal Board Nos. 615959 and 615960, the initial determinations holding the claimant ineligible to receive benefits, effective March 16, 2020 and ending June 17, 2020, on the basis that the claimant was not totally unemployed and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$4800.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 are sustained.

The claimant is denied benefits with respect to these issues.

Now, based on all of the foregoing, it is

ORDERED, that Appeal Board Nos. 615961 and 615962 shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing on the issues of whether, effective June 29 through September 6, 2020, the wages paid to the claimant, a non-professional employee of an educational institution, cannot be used to establish a valid original claim during the period between two successive academic terms, on the basis that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (11); charging the claimant with an

overpayment of Federal Pandemic Unemployment Compensation of \$2400.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an

overpayment of Lost Wages Assistance benefits of \$1800.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), 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 whether, effective June 29 through September 6, 2020, the wages paid to the claimant, a non-professional employee of an educational institution, cannot be used to establish a valid original claim during the period between two successive academic terms, on the basis that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (11); charging the

claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$2400.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1800.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), only; 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 new decisions, 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.

MICHAEL T. GREASON, MEMBER