



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 14, 2021

IN THE MATTER OF:

Appeal Board No. 616109

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 616106 and 616107, the claimant appeals from the combined decision of the Administrative Law Judge filed May 11, 2021, insofar as it sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 2, 2020 through June 25, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$8,064 in regular unemployment benefits recoverable pursuant to Labor Law § 597 (4); and charging the claimant with an overpayment of Federal

Pandemic Unemployment Compensation of \$7,200 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020.

In Appeal Board Nos. 616108 and 616109, the claimant appeals from the combined decision of the Administrative Law Judge filed May 11, 2021, insofar as it sustained the initial determinations disqualifying the claimant from receiving benefits, effective June 26, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$2,520 in regular unemployment benefits recoverable pursuant to Labor Law § 597 (4); and charging the claimant with an overpayment of Federal

Pandemic Unemployment Compensation of \$3,000, recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020.

At the combined telephone conference hearing 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 on the issues of the claimant's lack of total unemployment and the associated recoverable overpayments of regular benefits and FPUC benefits. The findings of fact and the opinion of the Administrative Law Judge, insofar as they concern those issues, 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 further hearing on the issues of voluntary separation without good cause, and the associated recoverable overpayments of regular and FPUC benefits. The record was not adequately developed with respect to these issues, and we find that a further hearing is necessary to give the parties an opportunity to provide further testimony and other evidence on these matters.

At the further hearing, the claimant shall be questioned further regarding her plan for after retirement, whether it was her intention not to work again, and what would enter into a decision to work after her retirement. In addition, the claimant shall be questioned regarding the effective date of her retirement.

In addition, the claimant shall be questioned further about her certifications after the date of her retirement; specifically, she shall be questioned concerning her responses to the weekly certification question regarding whether she was ready, willing and able to work, and why she responded the way that she did. A record of the claimant's certifications was received into evidence as Hearing Exhibit 4 at the hearing held on May 10, 2021.

Further, since the recoverability of any overpaid regular benefits is based upon a statement made by the claimant on June 28, 2020, the claimant shall be questioned about any statement she made on that date, including but not limited to her certification on June 28, 2020. Further, the "LO 404" screen calculating the benefits deemed recoverable in connection with the voluntary separation determination was marked by the hearing Judge but not discussed or received into evidence at the prior hearing. The claimant shall be confronted with these pages, and any other document setting forth benefits claimed to be overpaid in connection with this determination. Such documents shall be received into evidence after that confrontation and appropriate opportunity

for objection.

The hearing Judge shall receive other testimony and evidence necessary to decide the remanded issues.

DECISION: In Appeal Board Nos. 616106 and 616107, the combined decision of the Administrative Law Judge, insofar as appealed from, is affirmed.

In Appeal Board Nos. 616106 and 616107, the initial determinations holding the claimant ineligible to receive benefits, effective March 2, 2020 through June 25, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$8,064 in regular unemployment benefits recoverable pursuant to Labor Law § 597 (4); and charging the claimant with an

overpayment of Federal Pandemic Unemployment Compensation of \$7,200 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.

In Appeal Board Nos. 616108 and 616109, the combined decision of the Administrative Law Judge, insofar as appealed from, is rescinded.

Now, based on all of the foregoing, it is

ORDERED, that the case and issues in Appeal Board Nos. 616108 and 616109 shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing on the issues of the claimant's voluntary separation from employment, and associated recoverable overpayments of regular and FPUC benefits, only, 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, on the issues of the claimant's voluntary separation from employment, and associated recoverable overpayments of regular and FPUC benefits, 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

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>.