



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 02, 2021

IN THE MATTER OF:

Appeal Board No. 615749

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 615748 and 615749, the claimant appeals from the decisions of the Administrative Law Judge filed April 15, 2021, which sustained the initial determinations holding, effective June 29, 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 § 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 § 206.120 (f)(5).

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 by the claimant and on behalf of the employer.

Our review of the record reveals that the case should be remanded to hold a hearing. The record was not sufficiently developed on the determination of reasonable assurance. The parties should have another opportunity to submit additional testimony and other evidence on this issue.

At the remanded hearing, the claimant is to have an opportunity to testify as to whether she had any reason to believe that she would not have as much work in the 2020-2021 school year as she had in the 2019-2020 school year, and if so, the basis of her belief. The parties will then have an opportunity to testify as to how substitutes access web assignments via the Sub-Central registry; the process utilized to review, accept or decline those web assignments; and whether all web assignments accepted would be reflected within the Sub-Central registry and if not, why not.

The claimant will have an opportunity to testify as to how she accessed the internet and, in particular, the Sub-Central registry when searching for employment via the Sub-Central Registry website, and whether she had blocked any telephone numbers, including SPAM or unknown callers on the telephone utilized for these calls and if so, whether she had blocked calls from the Sub-Central Registry. She will be confronted with Hearing Exhibit 2, and Job #7347578, offered on March 19, 2020, and will be given the opportunity to testify as to how she found this assignment; the procedure she used to accept the assignment; whether she declined the assignment; why she declined such an assignment; and the procedure used to notify the employer that she declined the assignment.

Finally, the claimant will produce the telephone records for telephone number 917-365-1413 for the period from September 2019, through July 2020. These records shall be entered into the record after an opportunity for objection and comment.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, 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, 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