



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 03, 2021

IN THE MATTER OF:

Appeal Board No. 615965

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination holding, effective June 29, 2020, that the wages paid to the claimant, a 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 (10). The

claimant requested a hearing. The Commissioner of Labor objected that the hearing request was not made within the time allowed by statute.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed May 12, 2021 (), the Administrative Law Judge overruled the Commissioner of Labor's objection as to timeliness and sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination of reasonable assurance.

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 with respect to the claimant's additional employment during the 2019-2020 school year as a school counselor, F-status, for the employer. The parties should have another opportunity to submit additional testimony and other evidence on this issue.

At the further hearing, the parties will offer additional testimony and evidence as to the claimant's earnings in the 2019-2020 school year in any professional capacity, including but not limited to any work as a per-diem substitute teacher, as well as any work performed as a school counselor during the 2019-2020 school year. The parties will testify as to days worked, location assigned and how the assignments were obtained as a school counselor. The employer shall produce payroll records showing the claimant's earnings for all work performed for the NYCDOE in the 2019-2020 school year, including his roles as a per-diem substitute teacher as well as school counselor, which shall be entered into the record after an opportunity for confrontation and comment.

At the further hearing, the Administrative Law Judge will question the employer's witness, Mr. Kevin Hanratty as to why there is a discrepancy, if any, between the payroll records submitted at the prior hearing and the payroll records submitted at the current hearing for the 2019-2020 school year. He shall be questioned as to whether a letter of reasonable assurance letter for the claimant's position as a school counselor was sent to the claimant and if so, when. Any documentary evidence in further of such testimony shall be produced at hearing for entrance into the record after confrontation and comment.

Any documentary evidence in further of such testimony, including but not limited to the employer's payroll records of the claimant's earnings for all work performed for the NYCDOE in the 2019-2020 school year, shall be produced at hearing for entrance into the record after an opportunity for confrontation and comment.

The Administrative Law Judge will take any additional testimony and evidence necessary to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as it sustained the initial determination of reasonable assurance, 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 issue of reasonable assurance, 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 issue, 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.

GERALDINE A. REILLY, MEMBER