



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: NOVEMBER 01, 2021

IN THE MATTER OF:

Appeal Board No. 616074

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 616073 and 616074, the claimant appeals from the decisions of the Administrative Law Judge filed May 17, 2021, insofar as they sustained the initial determinations 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); charging the

claimant with an overpayment of \$5,040 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an overpayment of Federal

Pandemic Unemployment Compensation (FPUC) benefits of \$2,400 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 (LWA) benefits of \$1,800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5).

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by and 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 insofar as they concern the issues of reasonable assurance, recoverable overpayment of

FPUC benefits and recoverable overpayment of LWA benefits. The findings of fact and the opinion of the Administrative Law Judge insofar as they concern these issues are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

With respect to the issue of an overpayment of \$5,040 in regular benefits recoverable pursuant to Labor Law § 597 (4), only, based on the record and

testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant filed a claim for benefits on March 24, 2020 after the employer closed schools due to the pandemic and was paid regular benefits of \$5,040 during the period between the academic terms of 2019-2020 and 2020-2021.

**OPINION:** Pursuant to Labor Law § 597 (4), as amended effective May 18, 1998, a

new determination or decision shall not affect the rights to any benefits already paid under the authority of the prior determination or decision provided they were accepted by the claimant in good faith and the claimant did not make any false statement or misrepresentation and did not willfully conceal any pertinent fact in connection with the claim for benefits.

The sole basis for the recoverability of the regular unemployment benefits presented by the Department of Labor, is that the claimant did not accept the benefits in good faith because she knew she had reasonable assurance of returning to work with the employer following the summer break. We have previously held that a claimant accepts benefits in bad faith when she knows without any doubt that she is not entitled to such benefits (see, Appeal Board No. 552896).

The fact that the claimant in this case received a letter from the employer in June 2020 purporting to give reasonable assurance is not determinative since the conclusion of whether that offer of reasonable assurance was, in fact, a bona fide offer made in good faith is a legal conclusion determined by an analysis of the economic terms and conditions in both relevant academic years and the amount of work offered to the claimant. "Reasonable assurance" is a legal conclusion which a claimant, as a lay person not well-versed in the law, cannot be held responsible for making (see, Appeal Board Nos. 613961 and 615592). Accordingly, the claimant could not have known without a doubt that

she would have reasonable assurance of continued work after the summer of 2020 and that she was, therefore, not entitled to benefits. Accordingly, we conclude there was no bad faith and that the overpayment of \$5,040 in regular benefits is not recoverable.

DECISION: The decisions of the Administrative Law Judge are, modified as follows, and, as so modified, are affirmed.

In Appeal Board Nos. 616073 and 616074, the initial determinations, 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); charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$2,400 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 \$1,800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), are sustained.

In Appeal Board 616074, the initial determination, charging the claimant with an overpayment of \$5,040 in benefits recoverable pursuant to Labor Law § 597

(4), is modified to hold the overpayment to be nonrecoverable, and as so modified, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

The overpayment of \$5,040 in regular benefits is nonrecoverable.

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>.

MARILYN P. O'MARA, MEMBER