



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 03, 2021

IN THE MATTER OF:

Appeal Board No. 616192

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determinations reducing the claimant's right to receive future benefits by 216 effective days and charging a civil penalty of \$1,852.20 on the basis that the claimant made willful misrepresentations to obtain benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed May 18, 2021 (), the Administrative Law Judge overruled the initial determinations.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant has worked for a non-profit organization full time since 2018 as a data and support specialist. Throughout the time period now at issue, she worked Monday through Friday and was paid a gross amount of at least \$1,000.00 per week.

On or about March 16, 2020, the claimant lost her second job working part time as a restaurant server, and that employer gave her instructions for filing an unemployment insurance claim. She filed a claim for benefits on March 26, 2020 with an effective date of March 9, 2020.

For the week ending March 22, 2020, the claimant certified on a paper form that "I was eligible." The form explained that this certification would mean that, among other things, she did not work any day or earn more than \$504 that week.

For each week from the week ending March 29, 2020 through the week ending September 20, 2020, the claimant certified for benefits online. She answered certification questions including "How many days did you work, including self-employment, during the week ending \_\_\_\_\_?" and "Excluding earnings from self-employment, did you earn more than \$504?" Each week, the claimant made the factually false certifications that she worked "0" days and did not earn more than \$504. The claimant received \$12,348.00 of regular unemployment insurance benefits, which were recoverable because of the claimant's factually false certifications.

OPINION: The credible evidence establishes that, each week from the week ending March 22, 2020 through the week ending September 20, 2020, the claimant falsely certified to the Department of Labor that she did not work or earn more than \$504. Based on these certifications, she received \$12,348.00 in regular benefits. We find that the claimant knew she was working and how much she was being paid. Therefore, her false certifications constitute willful misrepresentations. Accordingly, we conclude that the claimant is subject to a forfeiture penalty and civil monetary penalty.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determinations, reducing the claimant's right to receive future benefits by 216 effective days and charging a civil penalty of \$1,852.20 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

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

MICHAEL T. GREASON, MEMBER