



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. 616243

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 616243 and 616244, the claimant appeals from the decisions of the Administrative Law Judge filed May 25, 2021, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 27, 2020 through July 15, 2020, on the basis that the claimant was not capable of work; charging the claimant with an overpayment of \$9,000.00 in Federal Pandemic Unemployment Compensation (FPUC) repayable 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 \$3,481.50 in benefits recoverable pursuant to Labor Law § 597

(4).

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 was an appearance by the claimant.

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

**FINDINGS OF FACT:** The claimant worked part time as a fast food restaurant cashier. The claimant was unable to work from March 27, 2020 through July 15, 2020 because she had COVID-19. Her doctor told her to rest and go back to work when she recovered. She told the manager that she was not coming back because she was feeling sick. In May, she tested positive for COVID-19. In July, the doctor told her she could go back to work.

The claimant filed a claim for benefits on March 27. Each week, she certified that there were "0" days when she was not ready, willing, and able to work. The claimant received \$3,481.50 in regular unemployment benefits and \$9,000.00 in FPUC benefits.

OPINION: The credible evidence establishes that the claimant did not work from March 27, 2020 through July 15, 2020 because she was ill. The claimant's doctor advised her to rest, and the claimant does not dispute that she was incapable of working during this time period. Accordingly, we conclude that, from March 27, 2020 through July 15, 2020, the claimant was ineligible for benefits. Therefore, the benefits she received constitute an overpayment.

The credible evidence further establishes that the claimant certified each week that there were "0" days when she was not ready, willing, and able to work. These certifications were factually false, as the claimant was incapable of working. Based on these false certifications, the claimant received \$3,481.50 in regular unemployment benefits and \$9,000.00 in FPUC benefits. Accordingly, we further conclude that the regular benefits are recoverable because the claimant's certifications were factually false, and the FPUC benefits are recoverable pursuant to federal law.

DECISION: The decisions of the Administrative Law Judge are affirmed.

In Appeal Board Nos. 616243 and 616244, the initial determinations, that the claimant was not capable of work; charging the claimant with an overpayment of \$9,000.00 in Federal Pandemic Unemployment Compensation (FPUC) repayable 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 \$3,481.50 in benefits recoverable pursuant to Labor Law § 597 (4), are

sustained.

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

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>.

MICHAEL T. GREASON, MEMBER