



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 01, 2021

IN THE MATTER OF:

Appeal Board No. 616415

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 616414 and 616415, the claimant appeals from the decisions of the Administrative Law Judge filed May 26, 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 \$2,400 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of \$1,638 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14

(a); charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1,800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5).

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.

Our review of the record reveals that the case should be remanded to hold a hearing. Further testimony and evidence are needed with respect to whether the claimant had reasonable assurance of performing services at an educational

institution during the 2020-2021 school year pursuant to Labor Law § 590 (11).

At the remand hearing, the claimant shall be questioned about 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, why. She should also produce any documentary evidence that may have caused her to believe that she did not have reasonable assurance of similar employment in the 2020-2021 school year.

The parties may produce any other relevant witnesses or documents. The Administrative Law Judge may take any other testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge are rescinded; and it is further

ORDERED, that the cases shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing, 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 new decisions, 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