



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 02, 2021

IN THE MATTER OF:

Appeal Board No. 616699

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board No. 616699, the claimant appeals from the decision of the Administrative Law Judge filed June 18, 2021, insofar as it sustained the initial determination charging the claimant with an overpayment of \$9,000 in Federal Pandemic Unemployment Compensation (FPUC) repayable pursuant to § 2104

(f) (2) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020.

In Appeal Board Nos. 616698, 616701, 616704, and 616707, appeals were processed from the decisions of the Administrative Law Judge dated June 18, 2021 which continued in effect the initial determinations holding the claimant ineligible to receive benefits, effective March 23, 2020 through October 4,

2020, on the basis that the claimant was not totally unemployed; holding the claimant ineligible to receive benefits, effective April 6, 2020 through September 13, 2020, on the basis that the claimant was not available for employment; holding the claimant ineligible to receive benefits, effective May 11, 2020 through October 4, 2020, on the basis that the claimant was not capable of work; and on certain specified days during the period beginning the week ending March 29, 2020 through the week ending September 6, 2020, on the basis that the claimant was on a paid vacation.

In Appeal Board Nos. 616700, 616702, 616703, 616705, 616706, 616708, and 616710, appeals were processed from the decisions of the Administrative Law Judge dated June 18, 2021 which sustained initial determinations charging the claimant with overpayments of benefits recoverable pursuant to Labor Law § 597

(4); charging the claimant with overpayments of Pandemic Emergency Unemployment Compensation recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with overpayments of Lost Wages Assistance benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); reducing the claimant's right to receive future benefits, and charging civil penalties on the basis that the claimant made willful misrepresentations to obtain benefits.

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 on behalf of the claimant and the employer.

It now appears that in Appeal Board Nos. 616698, 616700, 616701, 616702, 616703, 616704, 616705, 616706, 616707, 616708, and 616710, the appeals were processed through inadvertence. The record contains no actual request for an appeal from the Judge's decisions in these cases.

As to the issue in Appeal Board No. 616699, insofar as appealed by the claimant only, based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was employed as a lab helper by the employer medical college since 2003, and remains so employed. At all relevant times, she worked five days a week, for seven hours each day. The claimant was concurrently employed for 20 hours a week as a respite care worker by a foundation that cares for children with special needs. The foundation closed its doors on March 22, 2020 due to the COVID public health emergency, and the claimant lost her part-time employment. The claimant applied for unemployment benefits on April 23, 2020. Following her application, the claimant received unemployment compensation, including Federal Pandemic Unemployment Compensation (FPUC) benefits of \$600 per week, totaling \$9,000.

At the hearing before the Administrative Law Judge, the claimant withdrew her hearing requests with respect to the determinations holding her ineligible to receive benefits on the basis that she was not totally unemployed, not available, not capable, and was in receipt of holiday or vacation pay, and consented to the hearing Judge continuing in effect the ineligibility determinations.

OPINION: There having been no appeal from the decision to continue in effect the determinations holding the claimant ineligible on the basis of lack of total unemployment, lack of availability, lack of capability and because the claimant was in receipt of vacation or holiday pay, it is the law of the case that the claimant was ineligible to receive unemployment benefits for the periods at issue in the initial determinations, and for the reasons set forth therein. Significantly, the claimant stated at the hearing that she did not contest the determinations holding her ineligible, and conceded that those determinations were accurate.

Similarly, in light of the claimant's statement on appeal that the only issue she wishes to appeal is the decision regarding Federal Pandemic Unemployment (FPUC) benefits, there has been no appeal from the hearing decisions sustaining the initial determinations charging the claimant with the recoverable overpayment of regular unemployment compensation, Pandemic Emergency Unemployment Compensation (PEUC), and Lost Wage Assistance (LWA), and imposing forfeit penalties in connection with wilful misrepresentations made

upon certifying. Therefore, it is the law of the case that the claimant was overpaid regular, PEUC, and LWA benefits; that those overpaid benefits are recoverable; and that the forfeit penalties associated with the determinations were properly imposed.

Thus, we confine our decision to the issue of the overpayment of FPUC benefits, and the recoverability of any such overpaid benefits.

Under the CARES Act, Federal Pandemic Unemployment Compensation (FPUC) benefits are additional benefits that are payable to a claimant who is otherwise entitled under State law to receive regular unemployment compensation. CARES Act §2104(b)(1); UIPL No. 15-20, Attachment I, page 5.

Under Labor Law §591(1), a claimant must be totally unemployed in order to be eligible to receive benefits.

Pursuant to Section 2104 (f)(2) of the CARES Act of 2020, as amended by Section 261 of the Continued Assistance for Unemployment Workers Act of 2020, Federal Pandemic Unemployment Compensation (FPUC) benefits are recoverable if the claimant was not entitled to receive such benefits.

The credible evidence establishes that the claimant received FPUC benefits in the amount of \$9,000.

Since it is the law of the case that the claimant was not totally unemployed under the Labor Law, she was not eligible to receive regular benefits, and was therefore not entitled to the \$9,000 in FPUC benefits she received. Further, since the claimant's ineligibility resulted in the overpayment of all regular benefits she was paid, the FPUC benefits she received were also overpaid in full. Accordingly, and consistent with Federal Law, since the claimant was not entitled to receive FPUC benefits, the overpaid benefits are recoverable.

Any reference in the claimant's statement on appeal to the claimant being eligible for FPUC under certain guidelines because her place of employment was closed due to COVID, is misplaced. The reference pertains to eligibility for Pandemic Unemployment Insurance (PUA) benefits, which are not at issue.

DECISION: In appeal Board No. 616699, the decision of the Administrative Law Judge, insofar as appealed from, is affirmed.

The appeals in 616698, 616700, 616701, 616702, 616703, 616704, 616705, 616706, 616707, 616708, and 616710, are dismissed. The decisions of the Administrative Law Judge remain in effect.

The initial determination charging the claimant with an overpayment of \$9,000 in Federal Pandemic Unemployment Compensation (FPUC) repayable pursuant to §

2104 (f) (2) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, is sustained.

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

MARILYN P. O'MARA, MEMBER