



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 03, 2021

IN THE ER OF:

Appeal Board No. 616730

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 616729, 616730, and 616731, the claimant appeals from the decisions of the Administrative Law Judge filed June 1, 2021, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective beginning March 16, 2020 and ending November 1, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$8,997 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 Federal Pandemic Unemployment Compensation of \$10,200 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 Lost Wages Assistance benefits of \$1,200 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and holding that the claimant made willful misrepresentations to obtain benefits, imposing no forfeit penalty days.

At the combined telephone conference hearings 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 was employed by DSUSA as a retail associate since March 2016, working in a Disney outlet store. The store closed on March 18, 2020 due to the COVID-19 pandemic, and the claimant was placed on furlough. When it became apparent that the retail store was not going to

reopen soon, the claimant filed a claim for unemployment benefits on May 16, 2020; his claim was made effective March 9, 2020. The Department of Labor issued a determination, mailed on July 12, 2020, holding the claimant eligible to receive Pandemic Unemployment Compensation (PUA) benefits, at a weekly rate of \$420.

Beginning in November 2017, the claimant was concurrently employed by C&S Grocers, the employment at issue in this case. The claimant worked for C&S Sundays through Wednesdays, beginning at 5:30 A.M. The hours the claimant worked varied from day to day; some weeks he worked well over 40 hours a week, and in others he worked 30 hours. C&S paid the claimant \$13.98 per hour. After March 18, 2020, the claimant continued to work four days a week at C&S, until March 2021. The claimant earned more than \$504 each week through October 10, 2020, except for the pay periods ending September 5, September 12, September 26, and October 3, 2020, during which his earnings gross earnings were under \$504.

After he filed his claim for unemployment benefits, the claimant certified for benefits each week, beginning with the week ending May 17, 2020 through the week ending November 11, 2020. In addition, on June 3, 2020, the claimant certified for the week ending March 22, 2020 through the week ending May 10, 2020. Each week, the claimant was asked how many days he had worked in the previous week, and whether he had earned more than \$504 for that week. For each week, the claimant responded that he had not earned more than \$504. For the weeks ending March 22, 2020 through the week ending June 28, 2020, the claimant certified that he worked zero days. Beginning with the week ending July 5, 2020, the claimant reported that he worked wither 1, 2, 3, or 4 days during the week for which he was certifying. The claimant responded this way to the certification questions because he was answering them as they related to his employment with DSUSA, where he began working again on a limited basis on July 2, 2020.

Although the claimant had continued to work four days each week for C&S after March 18, 2020 when he was furloughed from his job with DSUSA, he did not report these days of work in his weekly certifications because he thought he was responding to questions about the job he lost due to the pandemic. As a result of the claimant's certifications, he received PUA benefits totaling \$8,997; Federal Pandemic Unemployment Compensation (FPUC) benefits totaling \$10,200; and Lost Wage Assistance (LWA) benefits totaling \$1,200.

OPINION: The credible evidence establishes that during the period covered by the initial determinations, from March 16, 2020 through November 1, 2020, the claimant was working four days each week for his employer C&S Grocers, Inc. Although he had been furloughed from one of his jobs when the store where he was working closed due to the pandemic, he continued to work his regular schedule of four days a week at C&S.

A claimant may qualify to receive Pandemic Unemployment Assistance (PUA) benefits if he becomes unemployed under one of the qualifying conditions set forth in the CARES Act. However, pursuant to Labor Law § 591(1), a claimant

must be totally unemployed to be eligible to receive any benefits. Since the evidence establishes that the claimant continued to work his regular schedule at C&S, four days during each of the weeks at issue, we find that he was not totally unemployed under the Labor Law, and therefore was not eligible to receive benefits.

Since the claimant is not eligible for benefits due to his lack of total unemployment, any benefits he received were overpaid. The evidence establishes that the claimant received PUA benefits in the amount of \$8,997; Federal FPUC benefits in the amount of \$10,200; and LWA benefits in the amount of \$1,200. Since the claimant was not eligible to receive these federal benefits, they were overpaid.

Pursuant to 20 CFR Section 625.14 (a), individuals who receive PUA benefits to which they were not entitled are liable to repay the overpaid benefits regardless of whether the payment was due to the individual's fault or misrepresentation. 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. Pursuant to 44 CFR Sec. 206.120 (f)(5), the state is responsible for the recovery of Lost Wages Assistance benefits awards made in error.

Since the evidence establishes that the claimant was not entitled to receive the federal benefits at issue because he was not totally unemployed, under the provisions of the CARES Act and the Code of Federal Regulations, the overpaid PUA, FPUC and LWA benefits are recoverable as a matter of law.

The evidence establishes further that the claimant certified for benefits each

week after he filed his claim, and that although the claimant worked four days during each week for which he certified, he failed to report these days worked to the Department of Labor in his weekly certifications. The claimant also failed to report his earnings of more than \$504 per week. We are unpersuaded by the claimant's contention that he believed he was answering the certification questions as they pertained to the job from which he had been furloughed. The certification question regarding days worked is clear and straightforward, asking simply for a claimant to report the number of days worked, without reference to any particular employer or employment. The questions regarding the amount earned is similarly unambiguous. Since the claimant had continued to work four days a week, and earned more than \$504 in most of these weeks, his weekly certifications failing to report his work and earnings were misrepresentations of fact. Since the claimant knew that he was continuing to work four days a week for C&S and did not report this work or his earnings to the Department of Labor, his misrepresentations are deemed to have been willfully made.

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

In Appeal Board Nos. 616729, 616730, and 616731, the initial determinations holding the claimant ineligible to receive benefits, effective beginning March 16, 2020 and ending November 1, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$8,997 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 Federal Pandemic Unemployment Compensation of \$10,200 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 Lost Wages Assistance benefits of \$1,200 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and holding that the claimant made willful misrepresentations to obtain benefits, but imposing no forfeit penalty days, are sustained.

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

MICHAEL T. GREASON, MEMBER