



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. 617187

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 617187 & 617188, the claimant appeals from the decisions of the Administrative Law Judge filed July 15, 2021, insofar as the Judge sustained the initial determinations, holding the claimant eligible to receive Pandemic Unemployment Assistance (PUA) benefits, effective March 16, 2020, at the decreased weekly benefit rate of \$182; and charging the claimant with an overpayment of \$3,220 in PUA benefits 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).

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 were appearances on behalf of the claimant and of the Commissioner of Labor.

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

**FINDINGS OF FACT:** On April 28, 2020, the claimant filed an application for PUA benefits that was set at the weekly rate at \$504 based on income information provided by the claimant. Subsequently, based self-employment business net income of \$15,790 during the 2019 calendar year, the Department reduced the claimant's PUA weekly benefit to the minimum rate of \$182. The claimant received \$504 each week for 10 weeks for weeks-ending March 29 through May 31, 2020.

**OPINION:** The credible evidence establishes that the claimant's PUA benefit rate was properly calculated at \$182 per week based on \$15,790 net business

income for the 2019 calendar year.

Pursuant to 20 CFR § 625.6 (a) (2), for purposes of computing the PUA weekly

amount, the "most recent tax year ... prior to the individual's unemployment" shall serve as the base period, and the "self-employment income to be treated as wages for purposes of computing the weekly amount" shall be the "net income reported on the tax return of the individual as income from all self-employment that was dependent upon the performance of services by the individual." Pursuant to Section 2102 (d) of the Coronavirus Aid, Relief and Economic Security (CARES) Act, the weekly benefit rate for claimants receiving Pandemic Unemployment Assistance (PUA) benefits is determined in accordance with state "unemployment compensation law", namely, NY Labor Law § 590 (5),

and Section 625.6 of title 20 of the Code of Federal Regulations (CFR), and the minimum weekly benefit rate cannot be less than the minimum amount established by the US Department of Labor pursuant to Section 625.6 (b) of title 20 of the Code of Federal Regulations. Also, pursuant to NY Labor Law §

590 (5), a claimant's weekly benefit amount shall be one twenty-sixth of the remuneration paid during the highest calendar quarter of the base period by employers, provided the claimant has remuneration in all four calendar quarters during the base period. Also, pursuant to the U.S. Department of Labor, New York State paid the minimum PUA weekly benefit rate of \$182. See, Unemployment Insurance Program Letter No. 11-20 and NO. 16-20, Change 1.

Here, as the PUA application was filed in 2020, the applicable base period is the 2019 calendar year, and as the claimant has 2019 business net income of \$15,790, the Department properly set the PUA weekly benefit rate at the minimum amount of \$182, which is greater than claimant's actual weekly benefit rate of \$151.83 (\$15,790, divided by four quarters equals \$3,947.50, divided by 26). Accordingly, we conclude that the claimant's objection to the PUA weekly benefit rate should be overruled. See e.g., Appeal Board No. 617465; and Appeal Board No. 614180.

Pursuant to Section 2102 (h) of the CARES Act of 2020, the regulations at 20 CFR 625 covering Disaster Unemployment Assistance (DUA) are also applicable to PUA; and pursuant to 20 CFR 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. As the claimant was not entitled to the higher benefit rate, the \$322 difference between the paid rate and revised minimum weekly benefit rate was properly deemed recoverable. Accordingly, the overpaid amount over 10 weeks totaling \$3,220 in PUA benefits was properly deemed a recoverable overpayment.

DECISION: In Appeal Board Nos. 617187 & 617188, the decisions of the Administrative Law Judge, insofar as appealed, is affirmed.

The initial determinations, holding the claimant eligible to receive Pandemic Unemployment Assistance (PUA) benefits, effective March 16, 2020, at the decreased weekly benefit rate of \$182; and charging the claimant with an overpayment of \$3,220 in PUA benefits 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), are sustained.

The claimant's objection to the weekly PUA benefit rate of \$182 is overruled.

GERALDINE A. REILLY, MEMBER

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>.