



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 02, 2021

IN THE MATTER OF:

Appeal Board No. 617753

PRESENT: JUNE F. O'NEILL MEMBER

In Appeal Board Nos. 617753, 617754 and 617755, the employer appeals from the decisions of the Administrative Law Judge filed August 23, 2021, insofar as they overruled the initial determinations disqualifying the claimant from receiving benefits, effective February 6, 2020, on the basis that the claimant voluntarily separated from employment without good cause and charging the claimant with overpayments of \$4,200 in benefits recoverable pursuant to Labor Law § 597 (4) and \$5,100 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 sustaining the modified initial determination reducing the claimant's right to receive future benefits by four effective days only.

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 should be taken before a decision is rendered on all the issues in this matter.

At the remand hearing, the claimant should be asked to explain the meaning of the statement in his letter of May 10, 2021 to the Department of Labor (Hearing Exhibit 3) that he "informed [his] employer via phone for the leave of absence, " in light of his testimony that he was not aware that a leave of

absence was available to him. He should also be asked to explain why he indicated in the Department of Labor questionnaire he signed on April 14, 2021 that he notified his supervisor on February 29, 2020 of the decision to resign, in light of his testimony that he was too ill to contact the employer and further was not aware that he needed to notify the employer that he was leaving his employment.

The employer should produce the persons who translated the information regarding leaves of absence to the claimant at the time of hire, and who witnessed this translation taking place. The employer should also produce the written materials regarding leaves of absence that the claimant received, which shall then be entered into evidence after appropriate confrontation.

The parties may produce any other relevant witnesses and 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 case shall be, and the same hereby is, 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.

JUNE F. O'NEILL, MEMBER