STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
PO Box 15126
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DECISION OF THE BOARD

Mailed and Filed: JUNE 09, 2022

IN THE MATTER OF:
Appeal Board No. 620541

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board No. 620540, an appeal by the Commissioner of Labor was processed from the decision of the Administrative Law Judge filed December 20, 2021, which overruled the Commissioner's timeliness objection and sustained the determinations ruling the claimant not entitled to receive benefits, effective March 23, 2020, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because the claimant did not

work and have earnings in at least two calendar quarters during either the basic base period or alternate base period; and was not paid at least $2,600 in one calendar quarter during either the basic base period or alternate base period.

In Appeal Board No. 620541, the Commissioner of Labor appeals from the decision of the Administrative Law Judge filed December 20, 2021, which sustained the initial determination holding the claimant eligible to receive Pandemic Unemployment Assistance (PUA) benefits, effective March 16, 2020, insofar as the decision modified the weekly benefit rate to $504 from $214.

The Administrative Law Judge held combined telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant.

The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

In Appeal Board No. 620540, it now appears that the appeal was processed

through inadvertence as the Commissioner of Labor has indicated that it is not appealing the decision of the Administrative Law Judge in ALJ Case No. 021-43430.

In Appeal Board No. 620541, based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: In 2019, the claimant worked as a self-employed language interpreter. During the period of October 1, 2018, through December 31, 2019, she had no other. The claimant reported self-employment earnings in all four quarters of 2019 on her schedule C form. Her 2019 net income was $22,342.

On April 3, 2020, along with her claim for regular benefits, the claimant applied for PUA benefits. The claimant's weekly PUA benefit rate was established at $214.

OPINION: The Labor Department, UIPL 16-20, Change 2, which analyzes 20 CFR §625.6 (a)(2), states the claimant's gross income cannot be used to establish

a higher benefit rate. Self-employed individuals' net income as reported on the claimant's tax return, IRS form Schedule C line 31, is used to determine the PUA benefit rate. To calculate the weekly benefit rate for a self-employed claimant, the claimant's annual net income as reported on the Schedule C line 31 is divided by four to determine the quarterly wage. Pursuant to Labor Law §

590 (5) the quarterly wage is divided by 26 to determine the claimant's weekly PUA benefit rate.

The credible evidence establishes the claimant's 2019 net income from self-employment as reported was $22,342. This amount, divided by 4, results in a quarterly wage of $5,585.50. Then the quarterly wage of $5,585.50 is divided by 26. The resulting amount of $214 is the claimant's weekly PUA benefit rate. Therefore, the claimant's weekly PUA rate was properly calculated by the New York State Department of Labor and is sustained.

DECISION: In Appeal Board No. 620540, the Commissioner of Labor's appeal is dismissed.

In Appeal Board No. 620540 the decision of the Administrative Law Judge is continued in effect.

In Appeal Board No. 620541, the decision of the Administrative Law Judge, insofar as appealed from, is reversed.

In Appeal Board No. 620541, the initial determination, holding the claimant eligible to receive Pandemic Unemployment Assistance (PUA) benefits, effective March 16, 2020, with a weekly benefit rate of $214, is sustained.

RANDALL T. DOUGLAS, MEMBER