STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
PO Box 15126
Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 19, 2022

IN THE MATTER OF:
Appeal Board No. 623675

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 623675 and 623676, the claimant appeals from the decisions of the Administrative Law Judge filed May 5, 2022, which granted the employer's application to reopen A.L.J. Case Nos. 022-03647 and 022-03648 and sustained the initial determinations disqualifying the claimant from receiving benefits, effective December 24, 2020, on the basis that the claimant voluntarily separated from employment without good cause; and charging the claimant with an overpayment of $18,270.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2) of the

Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and $10,800.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020.

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 was an appearance on behalf of the employer.

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

FINDINGS OF FACT: The claimant filed a claim for benefits on June 9, 2020. Subsequently, the claimant worked for the present employer from November 16, 2020 through December 23, 2020, as a solar installer.

On December 24, 2020, the claimant went to his country, the Dominican

Republic. The claimant sent the HR manager an email on December 27 stating that he had to travel to the Dominican Republic to resolve a personal matter, and he did not have an exact date to return. The HR manager wrote back to thank the claimant for his email and asked him to keep her informed. The employer placed the claimant on a personal leave of absence on December 28. The claimant replied on December 30 that he would do everything necessary to come back as soon as possible.

On January 12, the claimant notified the HR manager that he was not in good health and was awaiting the results of a COVID test. On January 20, the claimant sent the HR manager documentation that he tested positive for COVID.

The employer continued the claimant's leave of absence. On February 22, 2021, the HR manager sent the claimant an email saying he had until 7:00 PM to respond with a definite return date, or he would be separated from employment with the option of applying for re-employment in the future. The claimant returned to New York on February 23. On February 24, the claimant responded to the HR manager saying he was back in New York and that it would be most convenient if he could apply for re-employment in the future. The employer updated its records on February 24 to reflect that the claimant was no longer employed by reason of a voluntary mutual agreement of separation. The claimant subsequently received $18,270.00 in PEUC benefits and $10,800.00 in FPUC benefits.

The employer did not appear at the hearing held March 8, 2022, because both the employer and the employer's representative did not receive the Notice of Hearing, and the employer was not aware of the hearing. The employer applied to reopen and appeared at a hearing held May 4, 2022.

OPINION: The credible evidence establishes that the employer did not appear at the hearing held March 8, 2022, because the employer did not receive the Notice of Hearing and was not aware that the hearing was scheduled. The employer applied to reopen within a reasonable time, and the employer appeared at the hearing held on May 4, 2022. These circumstances constitute good cause to excuse the employer's failure to appear. Accordingly, we conclude that the employer's application to reopen is granted.

The credible evidence further establishes that the claimant's job ended after the employer sent the claimant an email on February 22, 2021, informing him that he had until 7:00 that evening to provide a definite return to work date

or else be separated from employment. Up until this time, the employer had been accommodating the claimant by granting him a leave of absence, and the claimant had been expressing an intention to return to work at some unspecified future date. Nothing in the record indicates that the claimant saw the HR manager's February 22 email on the day she sent it. By the time the claimant responded, on February 24, after returning to New York the previous day, the employer's deadline had passed, and the claimant's employment had already ended pursuant to the email's own terms. These facts establish that the claimant's separation was initiated by the employer. The claimant was discharged. Therefore, we conclude that he did not quit. Accordingly, the claimant's employment ended under non-disqualifying circumstances, and the claimant is allowed benefits. It follows logically, and we so further conclude that, as the claimant was entitled to benefits, he did not receive an overpayment of benefits.

DECISION: The decisions of the Administrative Law Judge are modified as follows and, as so modified, are affirmed.

In Appeal Board Nos. 623675 and 623676, the employer's application to reopen A.L.J. Case Nos. 022-03647 and 022-03648 is granted.

In Appeal Board Nos. 623675 and 623676, the initial determinations, disqualifying the claimant from receiving benefits, effective December 24, 2020, on the basis that the claimant voluntarily separated from employment without good cause; and charging the claimant with an overpayment of $18,270.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020, and $10,800.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2)

of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.
(Al reclamante se le asignan beneficios con respecto a los temas decididos en el presente.)

RANDALL T. DOUGLAS, MEMBER