



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 21, 2022

IN THE MATTER OF:

Appeal Board No. 624731

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination charging the claimant a civil penalty of \$3,805.27 on the basis that the claimant made willful misrepresentations to obtain benefits. The claimant requested a hearing.

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 were appearances by and on behalf of the claimant. By combined decision filed July 7, 2022 (), the Administrative Law Judge overruled the initial determination charging the claimant a civil penalty of \$3,805.27 on the basis that the claimant made willful misrepresentations to obtain benefits.

The Commissioner of Labor appealed the Judge's decision overruling the wilful misrepresentation determination to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

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

FINDINGS OF FACT: The claimant was employed part time as an assistant teacher at two different childcare centers owned by the same entity. One of the centers was closed on or around March 20, 2020, but the claimant continued to be paid through May 2020.

The claimant filed a claim for unemployment benefits on May 16, 2020; her claim was made effective March 9, 2020. Thereafter, the claimant certified

weekly for unemployment benefits. This included certifications on June 15, 2020 for the weeks ending March 22, 2020 through May 10, 2020, and weekly certifications from May 18, 2020 through August 15, 2021.

When the claimant certified weekly for benefits for the period beginning May 4, 2020 through January 17, 2021, she was asked how many days she had worked during the previous week. For each of these weeks, the claimant responded that she had worked "0" days, although she had worked from three to five days each week.

When the claimant certified for benefits for the period after January 17, 2021 and through August 15, 2021, she was asked how many hours she had worked, including in self-employment, during the prior week. For each of these weeks, the claimant accurately reported the hours and days she worked.

Each week's certification page advised the claimant that she was required to read the Claimant Handbook. The handbook provides that making false statements or withholding information from the Department of Labor will negatively affect a claimant's benefits. The handbook also includes the instruction that a claimant must report all work when certifying for benefits, including part-time or temporary work.

Initial determinations were mailed to the claimant on October 5, 2021. Those determinations held the claimant ineligible to receive benefits effective March 16, 2020 through August 15, 2021, on the basis that the claimant was not totally unemployed; charged the claimant with an overpayment of \$15,468.50 in regular unemployment benefits; an overpayment of \$9,900 in Federal Pandemic Unemployment Compensation (FPUC) benefits; an overpayment of \$300 in Lost Wages Assistance (LWA) benefits; and imposed the civil penalty for wilful misrepresentations at issue here.

OPINION: Pursuant to Labor Law § 597 (3), "any determination regarding a

benefit claim may, in the absence of fraud or wilful misrepresentation, be reviewed only within one year from the date it issues because of new or corrected information." Since the underlying initial determinations were issued on October 5, 2021, more than one year after part of the period covered by them, there must be a finding of wilful misrepresentation for the Commissioner to have had authority to issue them.

The combined hearing decision in A.L.J Case Nos. 022-12001 and 022-12002, modified the determination holding the claimant ineligible based on her lack of total unemployment to be effective May 4, 2020 through August 2, 2020; September 7, 2020 through January 31, 2021; February 8, 2021 through February 14, 2021; February 22, 2021 through March 28, 2021; and April 5, 2021 through August 15, 2021, only, and found the claimant ineligible to receive benefits in the weeks including in these periods only. That combined decision also modified the amounts of regular and federal benefits recoverable, consistent with the modified periods of ineligibility.

There having been no appeal from the hearing decision modifying, and as so modifying sustaining, the initial determinations of ineligibility and recoverable overpayment, the Board is bound by the findings of fact and conclusions of the hearing Judge with respect to these issues. Those findings include that the claimant was not totally unemployed, and therefore was ineligible to receive unemployment benefits, from May 4, 2020 through August 2, 2020; September 7, 2020 through January 31, 2021; February 8, 2021 through February 14, 2021; February 22, 2021 through March 28, 2021; and April 5, 2021 through August 15, 2021.

The hearing Judge's findings also include that when the claimant certified for benefits for the weeks she

lacked total unemployment prior to January 17, 2021, she certified that she had worked "0" days; that her certifications for those weeks were factually false statements; and that no factually false statements were made by the claimant when she certified for the weeks after January 18, 2021.

Since we are bound by the un-appealed finding and conclusion that no factually false statements were made by the claimant when she certified for benefits for the weeks after January 18, 2021, we may not find that the claimant's statements upon certifying for those weeks were wilful misrepresentations. However, we find that the claimant's factually false certifications for the period from May 4, 2020 through January 17, 2021, constitute wilful misrepresentations, and a monetary penalty is warranted.

Specifically, we find that the claimant knew or should have known the number of days she worked during each of the weeks at issue. We are not persuaded by the claimant's testimony that she did not know of the existence of a claimant handbook, since each week's certification referred to the handbook and advised

the claimant that she was required to read it. Further, the Board has repeatedly held that the certification question asked each week regarding the number of days worked is straightforward and in plain language, and does not require any specialized knowledge or expertise to answer accurately; nor does it require the claimant to have read the handbook.

In addition, it has not been established that the claimant certified the way she did because she received misinformation from a Department of Labor representative. The record is devoid of any such contention by the claimant. Moreover, even if the claimant was told by a Department representative that she could apply for benefits, that information did not absolve the claimant from truthfully and accurately answering the weekly certification questions.

Accordingly, we reverse the hearing decision finding that the claimant's false statements upon certifying from May 4, 2020 through January 17, 2021, were not wilful misrepresentations. This reversal is not only supported by the record, but establishes that the Commissioner had authority to issue the determinations insofar as they addressed periods prior to October 5, 2020.

DECISION: The decision of the Administrative Law Judge in A.L.J. Case No. , is reversed.

The initial determination, charging a civil penalty of \$3,805.27 on the basis that the claimant made wilful misrepresentations to obtain benefits, is modified in accordance with the Board's decision herein, and, as so modified, is sustained.

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

The amount of the civil penalty to be charged is referred to the Department of Labor for recalculation consistent with the decision in A.L.J Case Nos. 022-12001 and 022-12002, and this decision by the Board.

MICHAEL T. GREASON, MEMBER