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

DECISION OF THE BOARD

Mailed and Filed: JANUARY 05, 2023

IN THE MATTER OF:
Appeal Board No. 625454

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 625454, 625455 and 625456, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed August 16, 2022, which overruled the initial determinations holding the claimant ineligible to receive benefits, effective May 11, 2020 through June 7, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) of $1,800 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of $1,512 in Pandemic Unemployment Assistance (PUA) 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); and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of $496.80 on the basis that the claimant made willful misrepresentations to obtain benefits.

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 by the claimant.

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

FINDINGS OF FACT: The claimant worked as a full-time home attendant for the employer herein while also working for another employer. She lost her second employment due to the pandemic and filed a claim for benefits in May 2020. After filing her claim, she continued her full-time work with the employer herein; she worked on four days each week in the weeks ending May 17, May 24,

and June 7, 2020. In those weeks, the claimant worked 44 hours and earned $707.94 per week.

The claimant knew she was not entitled to Unemployment Insurance benefits because she continued to work full-time but believed she was entitled to federal pandemic benefits for the loss of her second job. She certified for benefits on May 20, May 29, and June 7, 2020, and with each certification she was asked on how many days she worked in the prior week. The claimant understood the certification question. Despite knowing that she worked on four days in the weeks ending May 17, May 24 and June 7, 2020, the claimant reported with each certification that she worked on zero days each week.

After the claimant received her first benefit payment, she realized she had received benefits to which she was not entitled and attempted to call the Department of Labor (DOL) seeking advice on how to certify but could not get through to a representative. She sent an email to the DOL asking for such advice and seeking to repay the benefits. Without further advice from the DOL, the claimant continued to certify and report that she had worked zero days each week. She so certified until she reached a DOL representative; after speaking with the representative, the claimant stopped certifying for benefits. As a result of her certifications, the claimant received $1,800 in FPUC benefits and $1,512 in PUA benefits.

OPINION: Pursuant to LL Section 597(3), any determination regarding a benefit claim may, in the absence of fraud or willful misrepresentation, be reviewed only within one year from the date it is issued because of new or corrected information. As the initial determination of lack of total unemployment and the associated determinations of recoverable overpayment and willful misrepresentation were issued more than one year after the period at issue, willful misrepresentation on the claimant's part is necessary for the Department of Labor to have the requisite jurisdiction to issue these determinations.

The claimant conceded that she worked on four days each week at issue yet with each certification knowingly reported that she worked on zero days each week. Her contention that she so certified out of confusion or mistake because she believed she was entitled to federal benefits for the loss of her second job, is unpersuasive. The claimant admittedly fully understood the certification question asking on how many days she worked. No specialized knowledge is required to answer the straightforward question regarding how many days she

worked (see, Appeal Board Nos. 561136 and 574170). Moreover, the claimant's testimony not only establishes that she knew she was not eligible for benefits because she continued to work full-time but also establishes that although she realized her false certifications resulted in her receiving benefits to which she was not entitled, she continued to certify for a number of weeks, each time reporting that she did not work when she had, in fact, worked on four days each week.

Although the claimant contends her false certifications should be excused because she reached out to the DOL about her certifications, she does not contest that she continued to falsely certify before she was able to ask about the certification process. It is significant that upon speaking with a DOL representative, the claimant stopped certifying. As such, the claimant did not receive any misinformation from the DOL. As the claimant knew she had worked on four days each week yet reported that she did not work with each certification at issue, we conclude that the initial determination of willful misrepresentation should be sustained, and that the Commissioner of Labor had the authority to issue the instant determinations.

With respect to the determinations of lack of total unemployment and recoverable overpayments, the claimant acknowledged that during the period at issue, she worked for the employer herein on four days each week. Accordingly, we conclude that the claimant was not totally unemployed and not entitled to benefits she admittedly received. As the claimant was not entitled to the benefits she received, they constitute an overpayment. The FPUC and PUA benefits she received are automatically recoverable pursuant to federal law. We further conclude that as a result of the willful misrepresentations made, the claimant is subject to the civil penalty imposed.

DECISION: The decisions of the Administrative Law Judge are reversed.

In Appeal Board Nos. 625454, 625455 and 625456, the initial determinations, holding the claimant ineligible to receive benefits, effective May 11, 2020 through June 7, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) of $1,800 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of $1,512 in Pandemic Unemployment Assistance (PUA) 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); and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of $496.80 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

The claimant is denied benefits with respect to the issues decided herein. (?? ????????? ???????, ????????? ? ????????? ??????????? ? ???? ????????? ????????, ????????? ???????? ? ????????? ???????.)

RANDALL T. DOUGLAS, MEMBER