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

Mailed and Filed: FEBRUARY 01, 2023

IN THE MATTER OF:
Appeal Board No. 626087

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 626086, 626087, the Commissioner of Labor appeals from the revised combined decisions of the Administrative Law Judge filed October 3, 2022, insofar as the combined decisions, overruled the initial determination, charging the claimant with an overpayment of $6,552.00 in regular benefits recoverable pursuant to Labor Law § 597 (4), and modified the

initial determination, reducing the claimant's right to receive future benefits by 304 effective days and charging a civil penalty of $ 1,436.40 on the basis that the claimant made a willful misrepresentation to obtain benefits, to reflect a forfeit penalty of 88 effective days and a civil penalty of $453.60, and as so modified, sustained the initial determination.

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 were appearances on behalf of the claimant and the employer. The Board considered the arguments contained in the written statement submitted on appeal 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 worked fulltime as a driver for a package delivery company until he was discharged on April 26, 2020. The claimant filed for unemployment insurance benefits, online, and his claim was made effective April 20, 2020. The claimant had previously filed for and collected unemployment insurance benefits in New York.

When filing his last online claim, the claimant observed a screen showing the "Nine Things to Know", which included the instruction to "review the claimant handbook." The claimant did not access the handbook online and did not review the handbook upon receipt. The handbook contained instructions to report all work, on any day, even if it was for an hour or less, and even if he did not receive any pay.

After the loss of his fulltime employment, the claimant continued to work a part-time job cleaning the building and removing the garbage for the employer two times per week. The job took no more than two hours per week, and he was paid $420.00 per month for his work.

During the period in question, when the claimant certified for unemployment insurance benefits, the questionnaire asked whether he had worked any days in employment or self-employment. The claimant regularly responded to "zero" day because he did not believe that the two hours of work per week constituted income based upon his online research and his own legal interpretation. He did not believe anything less than six to eight hours constituted work. The claimant neither reviewed the Department of Labor's information available online nor called the Department of Labor for clarification. The claimant received $6,552.00 in regular benefits .

OPINION: The Administrative Law Judge in 022-13007 (filed October 3, 2022) sustained the initial determinations, holding the claimant ineligible because he was not totally unemployed, effective April 27, 2020, through January 17, 2021, and charging an overpayment of $3,024.00 in PEUC benefits that are automatically recoverable. There being no appeal from that decision, we are bound by those determinations.

The credible evidence establishes that the claimant, when certifying during the period in question, indicated that he was doing no work in employment or self-employment while continuing to work part-time for the employer. Although the hearing Judge overruled the determination holding the overpayment recoverable, we reject his analysis.

We note, firstly, that term false statement in "Subsection (4) of Labor Law §

597 refers to a false factual statement as opposed to a purely legal conclusion involving the construction and application of a technical term in the Labor Law. Therefore, this provision compels recovery where a claimant

applying for benefits makes a statement which is false in fact. (See Appeal Board No. 542900 as citing Matter of Scully, 88 AD2d 689 [3d Dept 1982] Matter of Piccirilli, 92 AD2d 686 [3d Dept 1983])." We remain bound by the determination that the claimant was not totally unemployed, effective April 27, 2020, through June 17, 2021. Consequently, his certifications, that he was not working, when he was in fact working, were false in fact. Consistent with the provisions of Labor Law § 597 (4), the unemployment insurance benefits

paid to the claimant are therefore recoverable. (See Matter of McBurney, 46 AD3d 1308 [3d Dept 2007]; Matter of Smith, 23 AD3d 973 [3d Dept 2005]; Matter of Piccirilli, 92 AD2d 686 [3d Dept 1983]).

The credible evidence further establishes that the claimant's certifications, to performing no work, when, in fact, he was working, constituted wilful misrepresentations to obtain benefits. In so determining, we note that the question as to whether one worked requires no specialized knowledge of the law, a legal conclusion, or receipt of the claimant handbook (Appeal Boards Nos. 559882, 542900, 618572). We find it significant that the claimant had claimed benefits previously and elected to rely upon his own online legal research.

We note too, that, at hearing, the claimant never contended that he was confused. His certification, to performing no work, was based upon his belief that his weekly assignment did not constitute work as per his own research. Although the lower authority hearing judge relies upon Appeal Board No. 564282 and Matter of

Scranton, 12 NY2d 983 (1963) to ratify the claimant's wilful misrepresentations, such analysis is misplaced as those cases did not involve wilful misrepresentations to obtain unemployment insurance benefits.

The claimant, herein, instead, chose to conceal continuing employment while certifying to the contrary to obtain unemployment insurance benefits to which he was not entitled. Hence, the claimant knew or should have known that his employment constituted work, and that his certification to no work was false, known to be false, and constituted a wilful misrepresentation for which a forfeit penalty of 304 effective days was properly imposed. And, as the claimant made wilful misrepresentations to obtain unemployment insurance benefits and was overpaid unemployment insurance benefits, the civil penalty in the amount of $1,436.40 was properly imposed.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

In Appeal Board Nos. 626086, 626087, the initial determinations, charging the claimant with an overpayment of $6,552.00 in benefits recoverable pursuant to Labor Law § 597 (4), and reducing the claimant's right to receive future

benefits by 304 effective days and charging a civil penalty of $ 1,436.40 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