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

DECISION OF THE BOARD

Mailed and Filed: APRIL 21, 2023

IN THE MATTER OF:
Appeal Board No. 628201

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 628201, 628202 and 628203, the claimant appeals from the decisions of the Administrative Law Judge filed February 15, 2023, which denied the claimant's application to reopen the decisions of the Administrative Law Judge, filed July 16, 2021, and continued in effect those decisions that sustained the initial determinations disqualifying the claimant from receiving benefits, effective September 25, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of $4,641 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an overpayment of Federal

Pandemic Unemployment Compensation of $1,200 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of $696.15 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined 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: A hearing was scheduled in the matter on July 16, 2021. The claimant did not appear at the hearing because he did not receive the notice, as he no longer resided at that address. The notice was returned as non-deliverable mail. The claimant did not receive the July 16, 2021 default

decisions that were also mailed to the same address. On December 14, 2022, he applied to reopen when he discovered that he owed money to the Department of Labor.

OPINION: The credible evidence establishes that the claimant did not appear at the hearing because he did not receive the notice of hearing. The evidence further establishes that he did not receive the default decisions. Having not received the hearing notice and the decisions, the claimant was unaware of the need to apply to reopen the matter within a reasonable period of time from the date of such decisions. Accordingly, we conclude that the claimant has established good cause for his failed to appear and that his application to reopen is granted.

Our review of the record, however, reveals that the case should be remanded to hold a hearing concerning the issues of voluntary separation from employment without good cause, overpayment of regular and FPUC benefits, and willful misrepresentation, as no testimony or evidence was taken on these issues.

DECISION: The decisions of the Administrative Law Judge, insofar as they denied the claimant's application to reopen, are reversed.

The claimant's application to reopen the decisions of the Administrative Law Judge, filed July 16, 2021, is granted.

The decisions of the Administrative Law Judge, insofar as they sustained the initial determinations concerning the issue of voluntary quit, overpayment or regular and FPUC benefits, and willful misrepresentation, are rescinded.

Now, based on all of the foregoing, it is

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of voluntary quit, overpayment, willful misrepresentation, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issues of voluntary quit, overpayment of regular and FPUC benefits, and willful misrepresentation, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an

opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issues only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER