



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

---

Mailed and Filed: OCTOBER 22, 2010

IN THE MATTER OF: Appeal Board No. 553518

PRESENT: GERALDINE A. REILLY, MICHAEL T. GREASON MEMBERS

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective June 1, 2010, on the basis that the claimant refused an offer of suitable employment without good cause; charging the claimant with an overpayment of \$1,620 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an overpayment of \$100 in Federal Additional Compensation (FAC) benefits recoverable pursuant to § 2002 (f) of the American Recovery and Reinvestment Act of 2009; and reducing the claimant's right to receive future benefits by eight effective days on the basis that the claimant made a wilful misrepresentation to obtain benefits. The claimant requested a hearing.

The Administrative Law Judge held a hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed August 13, 2010 (), the Administrative Law Judge sustained the initial determinations.

The claimant appealed the Judge's decision to the Appeal Board.

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

**FINDINGS OF FACT:** The claimant filed a claim for unemployment insurance benefits effective in May of 2010. She had previously worked in a long-term temporary assignment at a clerical position for an insurance services provider client of the employer herein, a temporary staffing service. At the end of May 2010, the client submitted to the employer an order for temporary workers for another long-term temporary clerical assignment in the same department, at a rate of \$13.75 per hour, with duties involving contacting insurance brokers to see that they had necessary materials, or any questions/concerns, and to document such contacts in the client's database. The position was to start on June 1, 2010, or as soon thereafter as the job could be filled. The client

was particularly interested in having the claimant return to work for them. A senior staffing supervisor called and spoke with the claimant on June 1, 2010, offering the claimant the position. The employer told the claimant that she had a position with the client for whom she had previously worked, in the same department, which was a little different than she had done before and explained the job duties. The claimant asked if the job would lead to permanent employment, and the employer explained that it was a temporary position that would not lead to permanent work and it paid \$13.75 an hour. The claimant told the employer that she was not interested in full-time temporary work; she wanted a permanent job and that she was willing to work part time in order to have time to continue looking for a permanent job. She also was reluctant to return to that department as the manager was quite strict and required long hours, but mostly because she knew that she would be unemployed again when the position ended and therefore she did not feel it was stable employment. For this position, the employer's client only wanted full-time workers. The Department of Labor provided prevailing wage information for data entry keyers and information clerks, the job descriptions of which covered the duties contained in the offered position. The cut off wage for data entry keyers was \$12.75 an hour and for information clerks was \$11.76 an hour.

The claimant had received a Claimant Information Handbook after filing her unemployment insurance claim in May of 2010. She looked through it but had not read page 8 and 10 prior to receiving the employer's call. The claimant certified for benefits on Sundays on the website. When asked if she had refused work for the week ending June 6, 2010, she entered "no", because she did not feel that she had completely refused a job as she was willing to work part-time. She received \$1,720 in Unemployment Insurance and FAC benefits.

**OPINION:** The credible evidence establishes that the employer offered the claimant a job with a specific employer at a location at which the claimant had previously worked, which had a start date of June 1, 2010. Accordingly, it was a bona fide job offer. The credible evidence also establishes that the claimant froze the offer of employment when she told the employer that she did not want full-time temporary work. By this statement, she dissuaded the employer from revealing the start date of this position since the employer knew that the client did not want any part time workers. (See A.B. 496530.) It is significant that the offered employment was consistent with the claimant's experience and training and paid the prevailing wage. A claimant's desire to obtain full-time employment does not constitute good cause for refusing temporary work. (See Matter of Ruggieri, 273 A.D.2d 723.) Under the circumstances, the claimant refused a suitable offer of employment without good cause and was properly disqualified from receiving benefits.

The claimant admitted that she received \$1,720 in regular and FAC benefits. As she was

properly disqualified from receiving benefits, those benefits constitute an overpayment. The claimant further admitted that when certifying for benefits for the week ending June 6, 2010, she stated that she had not refused an offer of work that week. As the claimant admitted receipt of the Claimant Handbook, she is charged with knowledge of its contents, and thus knew or should have known that she was obligated to report all such refusals of offered employment. While the claimant contends that she did not "completely refuse" the offer of employment because she made a counteroffer to work part time, such counteroffer did not relieve the claimant of the obligation to accurately report having refused an initial offer of full-time employment. Her failure to do so was intentional and therefore constituted both a factually false statement and a wilful misrepresentation that she had not refused offered work, and also had the effect of concealing the fact she had done so. Accordingly, the overpayment of benefits is recoverable and the forfeiture penalty was properly imposed.

DECISION: The decision of the Administrative Law Judge is affirmed.

The initial determinations, disqualifying the claimant from receiving benefits, effective June 1, 2010, on the basis that the claimant refused an offer of suitable employment without good cause; charging the claimant with an overpayment of \$1,620 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an overpayment of \$100 in Federal Additional Compensation (FAC) benefits recoverable pursuant to § 2002 (f) of the American Recovery and Reinvestment Act of 2009; and reducing the claimant's right to receive future benefits by eight effective days on the basis that the claimant made a wilful misrepresentation to obtain benefits, are sustained.

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

GERALDINE A. REILLY, MEMBER

MICHAEL T. GREASON, MEMBER