



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 05, 2013

IN THE MATTER OF: Appeal Board No. 569753

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the monetary determinations ruling the claimant not entitled to receive benefits, effective July 30, 2012, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because the claimant had no covered base period employment; ruling the claimant not entitled to receive benefits, effective July 30, 2012, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because the claimant had insufficient earnings in covered base period employment; ruling the claimant not entitled to receive benefits, effective July 30, 2012, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because the claimant had no covered alternate base period employment; ruling the claimant not entitled to receive benefits, effective July 30, 2012, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because the claimant had insufficient earnings in covered alternate base period employment. 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 by the claimant and on behalf of the employer and the Commissioner of Labor. By decision filed November 14, 2012 (), the Administrative Law Judge sustained the monetary determinations, inadvertently not expressly sustaining the monetary determinations regarding the alternate base period.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the employer.

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

FINDINGS OF FACT: The claimant worked for over eleven years for a public school district as a bus monitor. Effective May 6, 2010, the employer placed the claimant on a

paid suspension pursuant to the collective bargaining agreement between the employer and the claimant's labor union. The relevant portion of the collective bargaining agreement states:

The District reserves the right to suspend an employee with pay from the time of the suspension until the final decision from the Superintendent or his designee and agrees not to unnecessarily delay such suspension period.

The employer paid the claimant in accordance with the collective bargaining agreement until the claimant's employment terminated in February 2012. The employer did not assign any duties to the claimant during the period of his suspension. The claimant filed a claim for unemployment insurance benefits effective July 30, 2012.

OPINION: The credible evidence establishes that the claimant was paid under the terms of a collective bargaining agreement from May 2010 to February 2012 while he was suspended from his job. The Commissioner of Labor and employer contend that the claimant's earnings during this period were properly excluded from the claimant's base period wages. The Unemployment Insurance Law defines the term "employment" to refer to "any service" rendered "under any contract of employment for hire" and "any service by a person for an employer." (See Labor Law § 511[1]). Although the performance of a "service" typically refers to the employee's performance of some affirmative act, we find it significant that the employment relationship in this case was governed by a collective bargaining agreement, a "contract of employment for hire." The terms of this agreement, including the terms governing the claimant's possible job assignments during the pendency of his disciplinary matter, were negotiated between the employer and the claimant's union, and the terms of that agreement were accepted by both parties. It was pursuant to this negotiated relationship that the employer directed the claimant to perform the "service" of not reporting to work until his status was resolved. In deference to the terms of the parties' written collective bargaining agreement, and pursuant to section 511's express inclusion of "any" service within the definition of employment, we find that the claimant's wages during the period of his paid suspension constitute earnings in employment. To the extent that these wages were paid to the claimant within his base period or alternate base period, these payments constitute base period or alternate base period wages upon which the claimant may establish a valid original claim. Accordingly, we conclude that the monetary determinations are overruled.

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

The monetary determinations, ruling the claimant not entitled to receive benefits, effective July 30, 2012, on the basis that the claimant was unable to file a valid original claim

pursuant to Labor Law § 527 because the claimant had no covered base period employment; ruling the claimant not entitled to receive benefits, effective July 30, 2012, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because the claimant had insufficient earnings in covered base period employment; ruling the claimant not entitled to receive benefits, effective July 30, 2012, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because the claimant had no covered alternate base period employment; ruling the claimant not entitled to receive benefits, effective July 30, 2012, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because the claimant had insufficient earnings in covered alternate base period employment, are overruled.

This matter is referred to the Department of Labor to determine the claimant's benefit rate in accordance with this decision.

GERALDINE A. REILLY, MEMBER