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NEW YORK STATE DEPARTMENT OF LABOR

UNEMPLOYMENT INSURANCE DIVISION

ADJUDICATION SERVICES OFFICE

April, 2024

INTERPRETATION SERVICE-BENEFIT CLAIMS

Work Search

*Failure to Maintain Work Search Records and Willful Misrepresentation*

In cases where claimants falsely certify that they have maintained a work search record a recoverable overpayment, civil penalty and willful misrepresentation penalty may be imposed.

AB 630571, 630572

In Appeal Board Nos. 630571 and 630572, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed August 10, 2023, which sustained the initial determination charging the claimant with an overpayment of $359 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), as modified to be nonrecoverable; and overruled the initial determination reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of $100 on the basis that the claimant made a willful misrepresentation to obtain benefits.

By decisions filed June 6, 2023, the Board rescinded the Board’s prior decisions and decisions of the Administrative Law Judge filed December 2, 2022, regarding the issues of recoverable overpayment and willful misrepresentation to obtain benefits with forfeit penalty and civil penalty, and remanded the case to the Hearing Section for a hearing and a decision on the remanded issues. 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 by the claimant and on behalf of the Commissioner of Labor.

The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

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

FINDINGS OF FACT: After the claimant had filed a claim for benefits effective April 18, 2022, he certified for benefits by telephone for the week ending April 24, 2022 through the week ending July 24, 2022.

Each week, when the claimant certified for benefits, he was told that by placing the claim he was certifying that the statements are true and correct and that he complied with any work search requirements in the week that is claimed. Prior to completing each certification, he was also told that to be eligible for benefits he must be actively seeking work and develop and keep a record of his work search activities for one year, and that if he received a request to submit his Work Search Record to the Department of Labor and failed to respond to the request, that his benefits may be stopped. The claimant did not maintain a written record of his work search because he was involved in activities searching for work.

The claimant certified for benefits for the week ending July 24, 2022. He received $359 in benefits for that week.

OPINION: The Administrative Law Judge in A.L.J. Case No. 022-28227 (filed December 2, 2022) decided that the claimant did not comply with the work search requirement of keeping a record of work search activities for the time period from July 18, 2022 through July 24, 2022. There was no appeal from that decision. We are bound by that decision. Accordingly, the claimant was overpaid regular unemployment insurance benefits in the amount of $359 attributable to the week ending July 24, 2022.

The credible evidence establishes that when the claimant certified for benefits for the week ending July 24, 2022, he was made aware that by completing the certification to claim benefits for that week he was certifying that he had also complied during that week with the work search requirements. This includes the requirement to keep a record of his work search activities for one year. The claimant admittedly did not keep a written record of his work search activities. The claimant admitted that each week when he certified for benefits, he had heard the portion of the recording about keeping a record of his work search activities for one year. Although he contends that, on some occasions when certifying, the recording presented by the telephone system sometimes went silent or skipped ahead, he did not indicate that he did not hear this specific information. In addition, the claimant testified that he may not have paid attention to that portion of the recording. Each week, by certifying for benefits the claimant was also certifying that he had complied that week with the work search requirements. Since he had not kept a record of his work search activities and knew he had not done so, we conclude that his certification for the week ending July 24, 2022 was both factually false and constitutes a willful misrepresentation to obtain benefits. Accordingly, the overpaid benefits are recoverable and the claimant is subject to the forfeit penalty and the civil penalty that have been imposed.

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

In Appeal Board Nos. 630571 and 630572, the initial determinations, charging the claimant with an overpayment of $359 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of $100 on the basis that the claimant made a willful misrepresentation to obtain benefits, are sustained.

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

COMMENTS

To apply this rule, it must be demonstrated that the claimant was made aware that by completing the certification process each week that they knew: 1. That they were certifying that they complied with work search requirements ; 2. That they must maintain a work search record for one year; and 3. That they must supply the work search record to the Department when directed to do so by the Department.