



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

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LAW OFFICES OF ROBERT J. BEZEMEK, PC
Claimant-Appellant

Case No.: **AO-341630**

OA Decision No.: 4996922

EDD: 1210 BYB: 05/19/2013

DECISION

Attached is the Appeals Board decision in the above-captioned case issued by Board Panel members:

ROY ASHBURN

MICHAEL ALLEN

This is the final decision by the Appeals Board. The Appeals Board has no authority to reconsider this decision. If you disagree with the decision, please refer to the information attachment which outlines your rights.

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██████████ CA 94704-2851

Date Mailed:

JAN 13 2014

Case Nos.: AO-341630 and AO-341632

Claimant: [REDACTED]

OP

In Case No. AO-341630 (FO Case No. 4996922), the claimant appealed from the decision of the administrative law judge that held the claimant ineligible for benefits under section 1252 of the Unemployment Insurance Code for the six weeks ending June 29, 2013.

In Case No. AO-341632 (FO Case No. 4996924), the claimant appealed from that portion of the decision of the administrative law judge that held the claimant was overpaid benefits and was liable for repayment of an overpayment in the amount of \$2,250 under code section 1375.

Pursuant to California Code of Regulations, title 22, section 5100(b), these appeals are consolidated for consideration and decision.

ISSUE STATEMENT

We adopt the administrative law judge's issue statements.

FINDINGS OF FACT

We adopt the first three sentences of the administrative law judge's findings of fact in Case No. AO-341630.

We add the following.

The claimant worked for nine months, last performing services on May 17, 2013. The claimant was paid for her work over a period of 12 months pursuant to the employer's policy. The claimant had no choice whether or not she would have her contracted pay for her service period paid over nine months or over twelve months. The claimant did not perform any services after May 17, 2013, but continued to be paid through the end of the contract period, June 29, 2013.

The claimant received retirement service credit for the nine months she actually performed services. She did not receive any additional retirement service credit for the additional three months when she was paid and did not perform services.

It was the claimant's understanding that during the six weeks at issue she was receiving deferred earnings because she was being paid for work previously performed.

The claimant was paid her weekly benefit amount of \$450 for each of the six weeks ending June 29, 2013 based on the claimant reporting she had no work or earnings.

REASONS FOR DECISION

We adopt the first paragraph of the administrative law judge's reasons for decision in each of the appealed cases, and add the following in reversing the appealed decisions.

The notice of determination states that the claimant continued "to accrue service credits (vacation, seniority, etc.)" during the period from May 19, 2013 through June 29, 2013 and therefore the pay she received constituted wages.

No evidence was presented that the claimant continued to accrue any service credits after her period of service ended on May 19, 2013. Although the claimant continued to be paid during the six weeks at issue, it was only pursuant to the employer's policy that the claimant was paid wages which were earned up to her last day of work, but not actually made available or paid to the claimant until after her service period had ended. Rather the claimant was receiving what could otherwise be considered as backpay attributable to the nine month service period when the claimant was employed. Because the claimant performed no services and was not paid wages during the six weeks at issue, the claimant is not ineligible to receive benefits under code section 1252 for the six weeks ending June 29, 2013.

It follows that because the claimant was not ineligible to receive benefits under code section 1252, she was not overpaid benefits for the six weeks ending June 29, 2013, and is not liable for payment of the alleged overpayment under code section 1375.

DECISION

The decisions of the administrative law judge are reversed. The claimant is not ineligible to receive benefits under code section 1252. Benefits are payable provided the claimant is otherwise eligible. The claimant was not overpaid benefits and is not liable for the overpayment.