New York State
Department of Labor

Section 1500

Misrepresentation and Redeterminations

Index 1500

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1500. Introduction

Wilful Misrepresentation

Section 594 of the Unemployment Insurance Law provides that "a claimant who has wilfully made a false statement or representation to obtain any benefit ... shall forfeit benefits for at least the first four but not more than the first eighty effective days following discovery of such offense ...". It further provides that the claimant shall be deemed to have received benefits for such forfeited effective days", and that "A claimant shall refund all moneys received because of such false statement ...".

Not every false statement subjects a claimant to the penalties provided in sub. sec. 594. A claimant may provide information (s)he believes to be true, which ultimately proves to be incorrect. In such instances no penalty applies. However, if it is established that the claimant was aware of the true situation, but gave false information, or purposely failed to fully disclose the facts, a determination of wilful misrepresentation should be made. As the courts have held, "'wilful' as used here does not imply a criminal intent to defraud but means 'knowingly' , 'intentionally' , 'deliberately' to make a false statement. (Matter of Vick, 12 AD 2d 120)

Redeterminations

Subsection 597.3 provides that "Any determination regarding a benefit claim may, in the absence of fraud or wilful misrepresentation be reviewed only within one year from the date it is issued because of new or corrected information, or, if the review is based thereon, within six months from a retroactive payment of remuneration, provided that no decision on the merits of the case has been made upon hearing or appeal."

Index 1595 – Redeterminations - contains current guidelines for making redeterminations under current case law. There are limitations on the Commissioner's ability to redetermine. The local office is prohibited from reviewing facts and issuing new determinations unless it can show that these limitations do not apply to a particular case.

Section 597.4 has been amended effective May 19, 1998. It provides that overpayments, except those resulting from retroactive payments of remuneration, are not recoverable if the benefits "were accepted by the claimant in good faith, and the claimant did not make any false statement or representation and did not wilfully conceal any pertinent fact in connection with his claim for benefits." Although not specifically set forth in the statute, causality is a necessary element of recoverability (Matter of Greenberg, 65 AD 2d 659). Only those benefits received by the claimant as a result of the claimant's wilful misrepresentation, false statement or wilful concealment of pertinent information, or not having been accepted in good faith, are recoverable. Benefits paid because the local office overlooked potentially disqualifying information provided by the claimant, or made an incorrect determination despite the claimant's disclosures are not recoverable.

An overpayment resulting from a retroactive payment of remuneration (e.g. back pay award, holiday or vacation pay) is always recoverable provided the determination is issued within six months of the date the retroactive payment is made.

Section 600.7(c) provides that overpayments resulting from pension reductions are recoverable subject to the conditions governing retroactive payments of remuneration, if, at the time benefits were due, it had not been established that the claimant would be receiving such pension.

Section 593.4, which deals with loss of employment as a result of an act constituting a felony in connection with employment, provides that "any benefit paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted in good faith." Thus, all overpayments resulting from a criminal act determination are recoverable without exception.

Determinations and redeterminations regarding wilful misrepresentation and recoverability of overpayments should be made in accordance with the principles reported in this section of the Interpretation Service and the policies set forth in relevant Special Bulletins (A-710 series)

1505. General

Wilful false statement, definition

Where claimant furnishes incorrect information but believes the statements he made to be factually true, the forfeit penalty for wilful false statements does not apply. (A.B. 28,560; A-750-1084)

A wilful false statement within the meaning of the law can be made without an affirmative statement by remaining silent when there is a duty to speak, but whether silence amounts to wilful misrepresentation is dependent on the facts of the situation and the intent of the party who fails to speak; thus a claimant's failure to come forward with pertinent information (self-employment) does not justify the imposition of the penalty when facts showing such duty to speak and an intent to conceal have not been established. (Matter of Galitzer, 2 AD 2d 923; A-750-1442)

A claimant who certifies to total unemployment while performing services as an elected official is subject to the penalty for wilful misrepresentation notwithstanding the fact that he disclosed his status when he filed his original claim and was informed that such work would not count as covered employment and would not affect his benefits because he was also advised to declare all full time or part time work while claiming benefits and had received the Claimant Handbook. (A.B.558788; A-750-2141).

Agent or impersonator

Where a claim form signed by the claimant contains false information, the penalty for wilful misrepresentation applies even though the blanks on that form calling for relevant information had been filled in by another person at claimant's direction but without attempt at verification by claimant as to the accuracy of the information as recorded and even though the claimant alleges that the recorded information does not correspond to instruction given to that person. (A.B. 51,489-55; A-750-1385)

Sending another person to impersonate claimant at local office and to certify to continuance of his unemployment constituted misrepresentation. (A.B. 1237-39)

When a claimant obtains or attempts to obtain benefits fraudulently by arranging for an impostor to report for him and sign for benefits in his name, this constitutes an aggravating circumstance, for which a forfeiture of 80 effective days of future benefits may be imposed (A.B. 299,751; A-750-1895)

When a claimant obtains or attempts to obtain benefits fraudulently, by having another person certify for benefits on his behalf by giving that person access to his personal identification number (PIN), this constitutes an aggravated circumstance, for which a forfeiture penalty of 80 effective days of future benefits may be imposed (A.B. 453,811; A-750-2073)

Disclosure to employment service

A false certification to total unemployment and false entries in the insurance booklet constitute a wilful misrepresentation to secure benefits even though claimant had disclosed the employment to the Employment Service and relied on the assistance of another person who marked the insurance booklet. (A.B. 55,936-56; A-750-1436)

Falsely certifying to the insurance office that no employment was refused constitutes a wilful misrepresentation even though claimant had previously informed the placement office of the refusal. (A.B. 74,809-60; A-750-1532)

Relationship to benefit rights

A wilful misrepresentation although made at a time when claimant was not entitled to benefits because of insufficient earnings, justifies the imposition of a forfeiture penalty, to be applied in a benefit year established subsequently by filing a valid claim at a later date in the next benefit year. (Matter of King, 278 App. Div. 1036; A.B. 24,663-50; A-750-1051)

Wilful misrepresentation was sustained where failure to report because of alteration of reporting date occurred subsequent to refusal but prior to actual issuance of refusal disqualification. (A.B. 28,834-51)

Concealment of a day of employment during a contested strike suspension period constitutes a wilful false statement to obtain benefits. (A.B. 39,501-53; A-750-1226)

Claimant's action in signing the back of the benefit check and then cashing it constitutes a wilful false statement when claimant knew she was not entitled to receive the benefits. (A.B. 396,995; A-750-2060)

Other considerations

A misrepresentation cannot be excused on the theory that claimant was not sufficiently apprised of the consequences of the false statement. (Matter of Trepper, 278 App. Div. 993; A-750-1030)

A false statement made during an interview is nullified so that no forfeit penalty applies when a claimant retracts the statement by disclosing the true facts before the conclusion of the interview. (A.B. 28,079-51; A-750-1446)

A false statement does not warrant the imposition of a forfeit penalty when claimant made the statement only to render himself ineligible to receive benefits; for instance, alleging employment while claimant is incapable (Matter of Davis, 283 App. Div. 908; A-750-1405; similarly, A.B. 52,064-55)

A wilful false statement deliberately made by the claimant at a referee hearing is subject to the imposition of the penalty provided in Section 594 of the law when there is evidence showing a calculated scheme to deceive the hearing officer, such as the presentation of spurious documents purporting to support the false statement. (A.B. 122,795; A-750-1647)

A negative response to the question whether claimant is related to persons for whom he had worked in the past twelve months was held to be a wilful false statement when claimant was employed by a corporation in which his relatives were officers and major stockholders. (A.B. 285,228; A-750-1884).

Claimant's action in signing the back of the benefit check and then cashing it constitutes a wilful false statement when claimant knew she was not entitled to receive the benefits. (A.B. 396,995; A-750-2060)

A willful misrepresentation may be found where the false statement was the result of the claimant's alleged confusion in responding "lack of work" on the original claim due to the claimant's belief it best described her situation given that she felt she was forced to quit her job (Matter of Crist, 113 AD 3d 1016; A-750-2159)

Alleged Identity Theft

A claim of identity theft cannot be accepted in the absence of persuasive evidence.(A-750-2146)

False statement or representation

1510. Availability or capability

Certifying to availability, on a day when claimant did not respond to a recall to work by the employer and was occupied in personal affairs, constituted wilful misrepresentation, when the supporting evidence shows an entry of the letter "N" instead of the letter "O" for the date when claimant was not available while for subsequent days of unavailability the booklet was so marked as not to claim benefit credits. (A.B. 52,905-55; A-750-1393)

A false statement does not warrant the imposition of a forfeit penalty when claimant made the statement only to render himself ineligible to receive benefits; for instance, alleging employment while claimant is capable. (Matter of Davis, 283; App. Div. 908; A-750-1405; similarly, A.B. 52,064-55)

1512. Base period weeks and wages

Claimant's overstatement of his base period earnings, resulting in assignment of a benefit rate of more than twice the correct rate, was a wilful false statement to obtain benefits. (A.B. 235,204; A-750-1829)

1515. Efforts to find work

Falsely certifying to having made written applications at employment agencies constitutes a wilful misrepresentation to obtain benefits. (Ref. 523-138-55R; A-750-1359)

1520. Employment and earnings

Claimant's failure to report one day's employment with earnings of less than $24 believing that such employment did not affect eligibility, represents a wilful false statement to obtain benefits since the statute (1) authorizes the forfeiture when claimant knowingly certifies to a false fact regardless of his interpretation of the ultimate effect of his statement, and (2) does not require a criminal intent or proof sufficient to support larceny. (Matter of Bernstein, 303 N.Y. 755. aff'g 278 App. Div. 625; A-750-986)

A false certification to total unemployment and false entries in the insurance booklet constitute a wilful misrepresentation to secure benefits even though claimant had disclosed the employment to the employment service and relied on the assistance of another person who marked the insurance booklet. (A.B. 55,936-56; A-750-1436)

A claimant who places "N" in the calendar insert and certifies that "I did not work in employment or self-employment although (s)he knew (s)he had worked two days and received pay is subject to the penalty for wilful misrepresentation notwithstanding that the claimant honestly misinterpreted the law and believed the work had no effect on benefit rights (Matter of Vick, 12 AD 2d 120)

An overpayment resulting from a false statement of fact, even if made unintentionally, is recoverable, but one resulting solely from an erroneous conclusion of law is not. Thus, if a claimant's activities in "employment" are so minimal that a claimant would not reasonably be expected to realize they constitute work a certification that "I did not work in employment or self-employment" is not a factually false statement; rather, it is a false legal conclusion and alone is insufficient to establish recoverability. (Matter of Valvo et. al. 57 N.Y. 2d 166; A-750-1929)

A claimant who certifies to total unemployment while performing services as an elected official is subject to the penalty for wilful misrepresentation notwithstanding the fact that he disclosed his status when he filed his original claim and was informed that such work would not count as covered employment and would not affect his benefits because he was also advised to declare

all full time or part time work while claiming benefits and had received the Claimant Handbook. (A.B.558788; A-750-2141).

1525. Insurance booklet alteration (Section obsoleted in its entirety)

1530. Claimant Handbook

Having received the information handbook, it is incumbent on the claimant to read it, and he is charged with the knowledge of its contents. (A.B. 535961; A-750-2123)

A claimant who files an original claim for benefits on line is made aware of the on-line information handbook, and is properly charged with the knowledge contained in it, despite non-receipt of the printed information booklet. (Matter of Jamie L. Nigro, 47 AD 3d 1040; A-750-2124)

1535. Reason for separation

Deliberately misrepresenting the reason for separation from employment in order to obtain benefits constituted wilful misrepresentation. (A.B. 7306-42; A-750-350)

Where a claim form signed by the claimant contains false information, the penalty for wilful misrepresentation applies even though the blanks on that form calling for relevant information had been filled in by another person at claimant's direction but without attempt at verification by claimant as to the accuracy of the information as recorded and even though the claimant alleges that the recorded information does not correspond to instruction given to that person. (A.B. 51,489-55; A-750-1385)

A forfeiture penalty resulted where claimant, unable to read or write did not attempt to ascertain what the stranger wrote as to reason for loss of employment since claimant must be held responsible for the false information furnished to the local office by that person in the preparation of the registration form for him. (A.B. 113,367)

Failure to disclose true reason of loss of employment which was due to claimant's own wrongful actions, and ascribing such loss to "no work", constitutes a wilful false statement or representation to obtain benefits. (A.B. 33,214-52; A-750-1139)

The signing of statements that their loss of employment was due to temporary layoff or lack of work, whereas the claimants participated in a walkout which constituted an industrial controversy and had been warned by officials of their union that signing such statements in support of their claims would get them in trouble, constituted wilful misrepresentation to obtain benefits. (A.B. 19,917-49; A-750-894)

Claimant did not make wilful false statements when, upon provoked discharge tantamount to a voluntary leaving he gave "layoff" as the reason for his unemployment, since he believed that the term layoff was synonymous with "discharged" or "fired". (A.B. 25,862-50; A-750-1024)

A claimant's statement on his application for unemployment insurance benefits that he was discharged because he was unable to meet his employer's performance or production standards is a willful misrepresentation when the claimant knew he was terminated for violating company policy and could have made a truthful statement on his application by choosing the option "fired", applicable when an employee is terminated for violating a company policy. (Matter of John M. Healy, 65 A.D. 3d 730; A-750-2129)
A claimant's selection of "Discharged - unable to meet performance or production standards" as the reason for separation, is not a willful misrepresentation when the employer's statement to the claimant informing him that he was discharged could cause the claimant to reasonably believe that his choice was truthful (A.B.542310; A-750-2138).

1540. Refusal of employment

Failure by a claimant to mention a job offer orally when certifying that "he has notified this office of all job offers" is not a false statement or concealment when an entry in the identification booklet which the claimant presented reflects the referral to the job and an overpayment is non-recoverable under such circumstances if there are no other facts showing a lack of good faith in accepting benefits. (A.B. 73,553-60; A-750-1512 rev.; similarly, A.B. 129,553)

Claimant's negative response on the certification coupon to the specific question, "Did you refuse any job offer or job referral?", constitutes a wilful false statement to obtain benefits, when in fact claimant did refuse a job offer or job referral. (A.B. 422,157A; A-750-2061)

Falsely certifying that no employment was refused may constitute a wilful misrepresentation to obtain benefits even though the refusal was with good cause. (A.B. 55,770-56; A-750-1433)

Falsely certifying to the insurance office that no employment was refused constitutes a wilful misrepresentation even though claimant had previously informed the placement office of the refusal. (A.B. 74,809-60; A-750-1532)

Denial, by a claimant, in response to specific questions that she had refused a job or an offer of a job by her former employer in the preceding week and subsequent signing of a statement that she had never been recalled by her former employer, such statements being contrary to the fact, constituted deliberate withholding of material information and as such was wilful misrepresentation to obtain benefits. (A.B. 18,818-49; A-750-876)

1545. Self-employment

A claimant who is actively seeking a job does not wilfully make a false statement by certifying to total unemployment, although engaged at the same time in activities which constitute "self-employment" for the purposes of the Unemployment Insurance Law, when the self-employment is such that an ordinary individual would not regard himself as "employed" under the

circumstances and when claimant, in good faith, does not realize that the activities are "employment" under the law. (Matter of Bunzl, 1 A.D 2d 46; A-750-1404)

A wilful false statement within the meaning of the law can be made without an affirmative statement by remaining silent when there is a duty to speak, but whether silence amounts to wilful misrepresentation is dependent on the facts of the situation and the intent of the party who fails to speak; thus a claimant's failure to come forward with pertinent information (self-employment) does not justify the imposition of the penalty when facts showing such duty to speak and an intent to conceal have not been established. (Matter of Galitzer, 2 A.D. 2d 923; A-750-1442)

1550. True last employer

Deliberate concealment of identity of last employer constituted wilful misrepresentation. (A.B. 8385-43; A-750-418)

A claimant who has wilfully made a false statement concerning the identity of his true last employer is subject to a forfeiture of benefits even though claimant's motive for making the false statement was not to induce the payment of benefits and even though had the true facts been stated by claimant, no disqualification from benefits would have resulted. (A.B. 49,704-55; A-750-1366)

1555. Training and experience

Denial of having had experience in an occupation where there are ample employment opportunities constitutes a wilfully made false statement or representation within the meaning of Section 594 of the Law so that the forfeit penalty applies. (A.B. 33,200-52; A-750-1146) (Similarly, A.B. 33,127-52 and Matter of Heilman, 13 A.D. 2d 588)

1580. Forfeit penalty, calculation

> (See Special Bulletin A-710-21, "Standards For The Imposition of Wilful Misrepresentation Penalties"

Benefits received, question of

A penalty of 20 forfeit days, */ instead of 24, is imposed for a wilful misrepresentation where the benefit check received by a claimant is returned without being cashed. (A.B. 42,938-54; A-750-1319)

A forfeit penalty of 20 effective days */ rather than 24 days is to be imposed for a wilful misrepresentation which affects a waiting period, even though an overpayment subsequently results because of a benefit payment made for a following week. (A.B. 50,318-55; A-750-1379)

The forfeiture penalty for a wilful false statement is only 20 effective days, */ although benefits were paid, if the facts do not warrant a disqualification so that no overpayment resulted from the false statement. (A.B. 98,038; A-750-1592)

*/ Now 4 effective days

One or several offenses

Wilful misrepresentation at the time of filing as to last day worked and the reason for termination of employment represents two offenses, each carrying a separate forfeiture. (A.B. 14,116-60; A-750-1524)

Four separate misrepresentations as to unemployment in four separate weeks for which benefits were sought were separate offenses. (A.B. 3980-40; A-750-247)

Falsely certifying at one interview to total unemployment during two statutory weeks constitutes a single offense. (A.B. 68,114-59; A-750-1503)

Where a wilful false statement was reiterated on two occasions during a continuous period of unemployment, only one penalty was imposed as the two falsehoods comprised only one illegal act and design. (Matter of Roberts, 261 App. Div. 845; A.B. 9690-43; A-750-523)

A claimant, rendering service, either as an employee or in self-employment, who falsely certifies to having done no work in employment or self-employment is subject to a forfeit penalty for each week for which he has falsely certified. (A.B. 315,823; A-750-1902)

When there is wilful concealment of employment during a continued claim, the fact that a quit of such employment is thereby concealed does not justify a second forfeit penalty when an additional claim was not filed. (A.B. 256,651; A-750-1849) (See Comments for computation of penalty)

Deviations from standards

Sending another person to impersonate claimant at local office and to certify to continuance of his unemployment constituted misrepresentation. (A.B. 1237-39)

When a claimant obtains or attempts to obtain benefits fraudulently by arranging for an impostor to report for him and sign for benefits in his name, this constitutes an aggravating circumstance, for which a forfeiture of 80 effective days of future benefits may be imposed. (A.B. 299,751; A-750-1895)

Falsely alleging employment and endeavoring to have entries made in the payroll books of an employer for whom claimant did not work so that such records might be used to establish entitlement to benefits, was such a flagrant offense as to warrant the imposition of the maximum forfeiture penalty (80 effective days) prescribed by law. (Ref. 545-92-52R; A-750-1105)

The maximum penalty of 80 effective days for a single and first offense of wilful misrepresentation was held to be unreasonable and harsh, in the absence of unusual circumstances, and was reduced by the Appeal Board to the minimum penalty. (Concealment of employment in waiting week) (A.B. 12,152-45; A-750-681)

When there is wilful concealment of employment during a continued claim, the fact that a quit of such employment is thereby concealed does not justify a second forfeit penalty when an additional claim was not filed. (A.B. 256,651; A-750-1849) (See comments for computation of penalty)

When a claimant obtains or attempts to obtain benefits fraudulently, by having another person certify for benefit on his behalf by giving that person access to his personal identification number (PIN), this constitutes an aggravated circumstance, for which a forfeiture penalty of 80 effective days of future benefits may be imposed. (A.B. 453,811; A-750-2073)

Liquidation or termination of penalty

Where there is a repetition of the same false statement constituting a single offense, the two-year limitation for serving the forfeiture penalty is computed from the last date on which the offense is committed. (A.B. 129,036; A-750-1650)

Where benefits should have been withheld because of a forfeiture penalty but were paid in error and are non-recoverable, the forfeiture penalty is not served in that period but remains in effect and applies to subsequent effective days. (A.B. 119,121; A-750-1630)

1585. Expiration Date of Penalty

A forfeit penalty will expire two years from the date an initial determination is issued. However, if a claimant requests a hearing, the new expiration date will be two years from the date of the decision issued by the Administrative Law Judge. If the claimant appeals the decision of the Administrative Law Judge to the Appeal Board, or the decision of the Appeal Board to the Court, the new expiration date will be two years from the date of the decision issued by either the Appeal Board or the Court. (A.B. 582,101 A; A-750-2156)

1590. Recovery of overpayment

The Commissioner of Labor has the right to recoup outstanding prior overpayments by withholding and offsetting current benefits. (A.B. 444,503; A-750-2076)

Removed (Please mark A-750-2087 obsolete)

Benefits are not accepted in good faith and the resulting overpayment is recoverable when the established benefit rate was so excessive that the claimant had doubts as to its correctness but failed to inquire at the local office about the accuracy of the rate. (A.B. 58,611-56; A-750-2104)

An overpayment resulting from a retroactive payment of holiday pay is recoverable even though the claimant accepted the benefits in good faith. (A.B. 108,102; A-750-2105)

An overpayment resulting from an incorrect statement by a claimant concerning the amount the amount of his base period earnings and weeks of employment, is recoverable under Section 597.4 because such statement was false, even though it may not have been wilfully false and even though the benefits may have been received in good faith. (A.B. 257,498; A-750-2106)

A claimant's mere acceptance of benefits to which he knows he is not entitled, does not constitute a wilful misrepresentation, but does demonstrate a lack of good faith, justifying recoverability of the resulting overpayment. (A.B. 299,819; A-750-2107)

The revision to Section 597.4, providing for non-recoverable overpayments under certain circumstances, does not apply to benefits paid for weeks ending May 17, 1998 and earlier, but only to benefits paid for weeks ending May 24, 1998 and later, regardless of the date on which such benefits were released. (A.B. 356,801; A-750-2108)

When a claim is invalidated as a result of a correction to erroneous monetary information, benefits that were overpaid are recoverable from a claimant who failed to bring the obvious error on the Notice of Determination to the attention of the Department of Labor. (A.B. 505,205; A-750-2116)

Pursuant to Section 600.7 (c) of the Unemployment Insurance Law, a claimant who receives a retroactive pension payment may be held subject to a retroactive benefit rate reduction and recoverable overpayment despite the fact that the claimant was not at fault and had made a full disclosure to the department regarding the pension shortly after filing the original claim. (Matter of Rita J. Sanchez, 56 A.D. 3d 846 [2008]; A-750-2128)

Although a claimant may be relieved of his obligation to make additional criminal restitution payments, this does not prevent the Department from exercising its right to seek civil compensation for the amount still due on the overpayment. A-750-2145)

1595. Redetermination

An initial determination, which is manifestly incorrect in fact or law, may be redetermined based on an internal review conducted within one year of the initial determination even if no "new or corrected information" is provided. (Matter of Carolyn Council, 132 AD 2nd 437; A-750-1986)