



LUCY LANG
Inspector General

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November 16, 2022

Gaurav Vasisht, Esq.
Executive Director and CEO
New York State Insurance Fund
199 Church Street
New York, New York 10007

Roberta Reardon
Commissioner
New York State Department of Labor
W. Averell Harriman State Office Campus
Building 12
Albany, New York 12240

Re: NYS IG 2446-316-2021

Dear Executive Director and CEO Vasisht:

On July 8, 2021, the New York State Department of Corrections and Community Supervision (DOCCS) referred a complaint to the Offices of the New York State Inspector General alleging that ██████████, a DOCCS correction officer then assigned to Marcy Correctional Facility, fraudulently collected unemployment insurance (UI) benefits while also collecting workers' compensation benefits for a knee injury suffered while on duty.

The Inspector General's investigation learned that ██████████ claimed he was injured while on duty at ██████████ Correction Facility on November 7, 2020. On December 4, 2020, ██████████ filed for workers' compensation benefits due to this injury. The New York State Insurance Fund (SIF) moved to controvert his claim as his injury coincided with ██████████ being mandated for overtime. During subsequent litigation regarding his eligibility for benefits, ██████████ did not receive his DOCCS salary or workers' compensation benefits. However, in late March 2021, the New York State Workers' Compensation Board (WCB) deemed ██████████ was entitled to workers' compensation benefits. ██████████ then received from SIF a retroactive payment of \$8,966.24 and weekly payments of \$388 from April 21, 2021 to July 11, 2021.

Separately, a New York State Department of Labor (DOL) investigation determined that ██████ filed a claim for UI benefits on December 4, 2020 (retroactive to November 2, 2020). DOL reported that ██████ indicated “Strike/Lockout - Issue” as the reason for his temporary absence from State service on his UI benefits application. However, the Inspector General notes that none of the responses¹ available to ██████ while completing his telephonic application for UI benefits matched the unique circumstances of his temporary absence from State service. ██████ then collected \$31,968 in State and federal UI benefits covering the period November 2, 2020 to September 6, 2021. As such, ██████ received both workers’ compensation and UI benefits during the period December 2, 2020 through May 12, 2021.

In July 2021, ██████ advised DOL that, on the advice of counsel, he had filed for UI benefits while his workers’ compensation claim was being controverted at SIF. In testimony under oath at a DOL hearing in December 2021, ██████ again reported that he had filed for UI benefits at the direction of his counsel and that his counsel had informed the WCB that he received unemployment benefits. ██████ further testified that at the time of his application for UI benefits, he was not receiving any income, and he had not intended to collect workers’ compensation and UI benefits simultaneously.

Ultimately, DOL Administrative Law Judge (ALJ) Janelle Eckel found that the \$31,968 in UI benefits which ██████ received were recoverable in full. Eckel’s decision was based on ██████ representations in weekly certifications he provided in order to receive UI benefits. ██████ stated that ██████ had made a “factually false statement that there were no days in which [he was] not ready, willing, and able to work, and [he] concealed the pertinent fact that there were days on which [he was] not ready, willing, and able to work.”

Notably, ██████ confusion regarding this question in the weekly certification is evident in his testimony at the DOL hearing. ██████ testified at the hearing that he misunderstood the question due to its negative phrasing and therefore had answered it incorrectly. The certification required ██████ to answer, “How many days are you not ready, willing, and able to work?” ██████ responded to this question in all of his weekly certifications with “0” rather than “4,” the latter which would have entitled him to the maximum weekly benefit.

In addition to the workers’ compensation and UI benefits received by ██████ during the period at issue, the Inspector General’s investigation found that ██████ received a small amount of income from two employers, Access CNY and UPS, at this time. ██████ was employed for a total of 20 hours by Access CNY between November 26, 2020 and April 28, 2021, for which he received \$269.60. Additionally, between

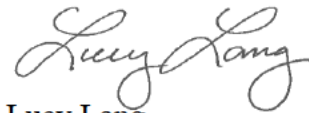
¹ The DOL UI Telephone Claims Line provides five options to a caller as to “the reason why you may no longer be working for your most recent employer.” These include: (1) “If you lost your job due to lack of work, involuntary reduction in force, downsizing, company shutdown, job elimination, company restructuring or reorganization, or lack of company funds or orders;” (2) “If you voluntarily left your job [quit];” (3) “If you were discharged because you were unable to meet your employer performance or production standards;” (4) “If you were discharged for a violation of company policy such as absenteeism, insubordination, drug or alcohol use or a criminal act [fired];” or (5) “If you are unemployed due to a strike or lockout where you worked.”

December 4, 2020 and December 14, 2020, [REDACTED] performed 25.34 hours of work for UPS and received \$476.39.

Given these findings, I am referring this matter to SIF to take any action it deems appropriate. Additionally, I recommend that DOL review and consider revising the referenced language in both its weekly certifications and UI Telephone Claims Line prompts.

Please advise me of any action taken by SIF in response to this referral within 45 days of the date of this letter. If you require further information, please contact Deputy Inspector General James R. Davis at 518 [REDACTED].

Sincerely,



Lucy Lang
Inspector General

cc: James Fiedler, Esq.
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