An Administrative Law Judge ruled in favor of South Brooklyn Legal Services’ client, determining that the client’s website and freelance work did not constitute ownership of a business and thus did not disqualify him from receiving unemployment benefits.

The Department of Labor’s guidelines state that in order to be eligible for unemployment benefits, an individual must be “totally unemployed,” and a person who owns their own business does not qualify. However, in many cases, the DOL mistakenly finds that a claimant owns a business when in reality he or she is just doing freelance work. In these cases, the DOL may also find that a claimant made a willful misrepresentation to obtain benefits by denying having a business, demand repayment of any benefits already received and/or impose a penalty equal to the value of two weeks of benefits.

Our client applied for unemployment benefits after being laid off from a full time job as a video editor. He periodically did freelance work while looking for full time employment, and he maintained a website with examples of his work to show prospective employers. When he applied for benefits, he told the DOL that he did not have a business.

After paying our client benefits for several months, the DOL determined that he was ineligible for unemployment benefits because he had a business. This was based largely on the fact that our client had a website. The DOL decided that he had made a willful misrepresentation by stating that he did not have a business and ordered him to repay the benefits he had already collected.

After a hearing, the Administrative Law Judge determined that our client did not own his own business. In the decision, the judge recognized that doing freelance work does not mean that a person owns a business, and that our client’s website was a legitimate part of his job search. The DOL retracted the charge that our client had made a willful misrepresentation and he did not have to repay the benefits he had already received.