

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: December 6, 2007

502567

In the Matter of the Claim of
SONIA G. GRAMONTE,
Appellant.

INOR DENTAL, P.C.,
Respondent.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,
Respondent.

Calendar Date: October 29, 2007

Before: Cardona, P.J., Crew III, Peters, Carpinello and
Mugglin, JJ.

Sonia G. Gramonte, Peekskill, appellant pro se.

Irene J. Goldsmith, Yorktown Heights, for Inor Dental,
P.C., respondent.

Andrew M. Cuomo, Attorney General, New York City (Gary
Leibowitz of counsel), for Commissioner of Labor, respondent.

Appeal from a decision of the Unemployment Insurance Appeal Board, filed June 22, 2006, which, among other things, ruled that claimant was disqualified from receiving unemployment insurance benefits because she voluntarily left her employment without good cause.

Claimant was employed as a dental assistant for two dentists. Following an incident in which one of the dentists reprimanded her for failing to inform the other dentist about defective materials, claimant became upset and went home. Two

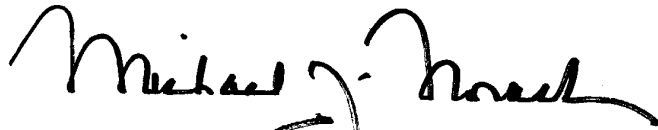
other employees accompanied her. Claimant did not return to work as scheduled and mailed the employer her keys. She applied for and received unemployment insurance benefits, but was subsequently disqualified by the Unemployment Insurance Appeal Board on the basis that she voluntarily left her employment without good cause. The Board also charged her with a recoverable overpayment and imposed a forfeiture penalty. Claimant appeals.

We affirm. "Criticism by an employer has been held not to constitute good cause for leaving one's employment" (Matter of Tubiak [Commissioner of Labor], 39 AD3d 992, 992 [2007] [citations omitted]; see Matter of Giustino [Commissioner of Labor], 11 AD3d 803, 804 [2004]). Here, claimant's sudden departure was a direct reaction to her employer's reprimand. Evidence was presented that she had abruptly left her job on two prior occasions but returned to work on her next scheduled work day. Although claimant asserts that the employer directed her and the two other employees to leave following the incident, she acknowledged that she was not told she was terminated or that she should not return to work. In any event, whether claimant was terminated presented a credibility issue for the Board to resolve (see Matter of Karastathis [Commissioner of Labor], 298 AD2d 822, 822 [2002]). Moreover, we find no merit to claimant's assertion that she was improperly denied the right to have her two coworkers subpoenaed to testify at the hearing. Although claimant was entitled to make this request (see 12 NYCRR 461.4 [c]), the Administrative Law Judge denied it on the ground that their testimony regarding the incident would be cumulative and any testimony pertaining to their employment status was irrelevant. Under these circumstances, the Administrative Law Judge did not err in denying claimant's request (see e.g. Matter of Monroe [Commissioner of Labor], 270 AD2d 558 [2000]; cf. Matter of Mintzer [Commissioner of Labor], 256 AD2d 965 [1998]). Claimant's remaining contentions have been examined and are unavailing.

Cardona, P.J., Crew III, Peters, Carpinello and Mugglin, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, looping initial "M".

Michael J. Novack
Clerk of the Court