

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

Decided and Entered: October 30, 2008

504625

In the Matter of the Claim of
ABRAHAM FATTAKHOV,
Appellant.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,
Respondent.

Calendar Date: September 24, 2008

Before: Cardona, P.J., Spain, Rose, Kane and Kavanagh, JJ.

Abraham Fattakhov, New York City, appellant pro se.

Andrew M. Cuomo, Attorney General, New York City (Bessie Bazile of counsel), for respondent.

Appeal from a decision of the Unemployment Insurance Appeal Board, filed March 5, 2008, which dismissed claimant's appeal from a decision of the Administrative Law Judge as untimely.

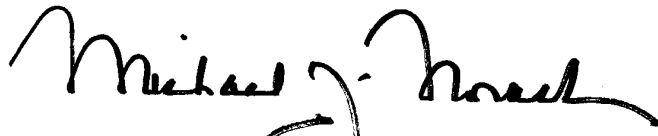
Following a hearing, an Administrative Law Judge (hereinafter ALJ) issued a determination on March 27, 2006 which, among other things, disqualified claimant from receiving unemployment insurance benefits on the basis that he voluntarily left his employment without good cause and charged him with a recoverable overpayment of \$2,025. On November 23, 2007, the Department of Labor sent claimant a notice requesting him to remit the amount of the recoverable overpayment. In response, claimant filed a notice appealing the original determination, which was received by the Department on January 7, 2008. The Unemployment Insurance Appeal Board dismissed the appeal because claimant failed to timely file it within 20 days of the ALJ's determination. Claimant appeals.

We affirm. Pursuant to Labor Law § 621 (1), an appeal from an ALJ's decision must be taken within 20 days from the date it was mailed (see Matter of Bottex [Commissioner of Labor], 48 AD3d 855, 856 [2008]; Matter of Moorer [Commissioner of Labor], 40 AD3d 1335 [2007]). Claimant here did not file his appeal until almost two years after receiving the decision. While he explained that he did not take an appeal sooner because he was upset, this did not constitute a reasonable excuse for his inaction (see Matter of Chadwick [Commissioner of Labor], 29 AD3d 1256, 1256-1257 [2006]). Accordingly, we need not address the underlying merits of the denial and decline to disturb the Board's decision (see Matter of Trinidad [Commissioner of Labor], 21 AD3d 1208, 1209 [2005]).

Cardona, P.J., Spain, Rose, Kane and Kavanagh, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:



Michael J. Novack
Clerk of the Court