

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

Decided and Entered: July 5, 2012

513722

In the Matter of the Claim of
DIANA ORTIZ,
Appellant.

NEW YORK EYE AND EAR INFIRMARY

MEMORANDUM AND ORDER

Respondent.
COMMISSIONER OF LABOR,
Respondent.

Calendar Date: May 9, 2012

Before: Rose, J.P., Spain, Kavanagh, McCarthy and Egan Jr., JJ.

Diana Ortiz, New York City, appellant pro se.

Eric T. Schneiderman, 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 November 1, 2011, which ruled that claimant was disqualified from receiving unemployment insurance benefits because her employment was terminated due to misconduct.

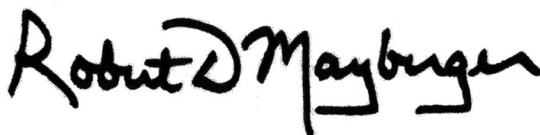
Claimant, an administrative assistant, was terminated for insubordination after she refused to cooperate with the employer's investigation of an earlier incident involving an angry dispute that claimant had with a tenant's employee. The Unemployment Insurance Appeal Board ruled that she was disqualified from receiving unemployment insurance benefits because she lost her job due to misconduct. Claimant appeals and we affirm.

"An employee's failure to comply with an employer's reasonable request may constitute insubordination rising to the level of disqualifying misconduct" (Matter of Guagliardo [Commissioner of Labor], 27 AD3d 866, 867 [2006] [citations omitted]; see Matter of Setzer [Commissioner of Labor], 69 AD3d 1087 [2010]). Here, claimant admittedly refused repeated requests by the employer's director that she discuss the incident with him. Given the reasonableness of this request and the absence of a compelling reason for claimant's refusal (see Matter of Guagliardo [Commissioner of Labor], 27 AD3d at 867), we find no basis to reverse the Board's decision.

Rose, J.P., Spain, Kavanagh, McCarthy and Egan Jr., JJ.,
concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court