

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

Decided and Entered: January 17, 2013

514545

In the Matter of the Claim of
ALEXEI KIRILYTCHEV,
Appellant.

CENTRAL MOVING & STORAGE
COMPANY, INC.,
Respondent.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,
Respondent.

Calendar Date: December 17, 2012

Before: Rose, J.P., Lahtinen, Spain, Stein and McCarthy, JJ.

Alexei Kirilytchev, Fort Lee, New Jersey, appellant
pro se.

Pitta & Giblin, LLP, New York City (Barry N. Saltzman of
counsel), for Central Moving & Storage Company, Inc., respondent.

Appeal from a decision of the Unemployment Insurance Appeal Board, filed August 15, 2011, which ruled that claimant was disqualified from receiving unemployment insurance benefits because his employment was terminated due to misconduct.

Claimant scheduled a two-week vacation in order to travel to Russia, despite having purchased a round-trip airline ticket that required him to stay in Russia for three weeks. He thereafter requested an additional week of time off, informing the employer that he had to undergo a medical examination and attend physical therapy sessions back in this country. This additional time off was initially granted, but, with the

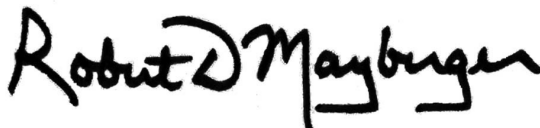
exception of an additional day to undergo the medical examination, the request for the remainder of the week was ultimately denied after the employer was notified that the physical therapy sessions had been postponed. When claimant failed to return to work after his approved vacation time was completed, his employment was terminated. The Unemployment Insurance Appeal Board ruled that he was disqualified from receiving unemployment insurance benefits because his employment was terminated due to misconduct. Claimant appeals.

We affirm. "An employee's unauthorized absence from work has been held to constitute misconduct that disqualifies the claimant from receiving unemployment insurance benefits" (Matter of Roe [Commissioner of Labor], 62 AD3d 1105, 1106 [2009] [citations omitted]; see Matter of Samuel [Commissioner of Labor], 97 AD3d 886, 887 [2012]). Here, the record reflects that claimant failed to report to work as scheduled after his vacation time ended and his request for additional time had been denied. To the extent that claimant testified that he was granted the additional time, this presented a credibility issue for the Board to resolve (see Matter of Roe [Commissioner of Labor], 62 AD3d at 1106; Matter of Tahat [Commissioner of Labor], 58 AD3d 921, 921 [2009], lv dismissed 13 NY3d 857 [2009]).

Rose, J.P., Lahtinen, Spain, Stein and McCarthy, JJ.,
concur.

ORDERED that the decision is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court