

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

Decided and Entered: November 8, 2018

526553

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In the Matter of the Claim of  
CHRISTOPHER OLOGBONJAIYE,  
Appellant.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,  
Respondent.

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Calendar Date: September 18, 2018

Before: McCarthy, J.P., Lynch, Devine, Clark and Rumsey, JJ.

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Hinman Straub, PC, Albany (David B. Morgen of counsel),  
for appellant.

Barbara D. Underwood, Attorney General, New York City  
(Mary Hughes of counsel), for respondent.

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Appeal from a decision of the Unemployment Insurance  
Appeal Board, filed June 19, 2017, which ruled, among other  
things, that claimant was ineligible to receive unemployment  
insurance benefits because he was not totally unemployed.

Claimant, an office cleaner, applied for unemployment  
insurance benefits and, during the period of June 23, 2013  
through November 17, 2013, received benefits after certifying  
each week how many days he had worked. Claimant certified that  
he worked zero days the week ending June 23, 2013 whereas the  
employer's payroll records reflected that he had worked three  
days that week; in the remaining weeks, claimant certified that  
he worked between zero and three days each week when the records  
show that he worked five days in each of those weeks. At the

hearing, claimant admitted that the employer's payroll records were accurate, that he had worked on the days reflected therein and that, when certifying for benefits, he had not reported working on the days in issue. The Unemployment Insurance Appeal Board affirmed a decision of an Administrative Law Judge finding that claimant was ineligible to receive unemployment insurance benefits because he was not totally unemployed on the days in issue. The Board charged claimant with a recoverable overpayment of benefits due to his willful misrepresentations, imposed a civil penalty and reduced his right to future benefits by 176 effective days. Claimant appeals.

We affirm. Substantial evidence supports the Board's finding that claimant lacked total unemployment during the periods in issue and that he made willful false statements to obtain benefits (see Labor Law §§ 522, 591 [1]). "[W]hether a claimant has made a willful misrepresentation to obtain benefits is a factual issue for the Board to resolve and [its decision] will be upheld if supported by substantial evidence" (Matter of Schneider [Commissioner of Labor], 158 AD3d 882, 882-883 [2018] [internal quotation marks and citations omitted]). To that end, "[a] claimant may be found to have made a willful misrepresentation to obtain benefits even if the false statement was made unintentionally or was the result of confusion" (id. at 883 [internal quotation marks and citation omitted]), and criminal intent is not required (see Matter of Guibord [Commissioner of Labor], 147 AD3d 1137, 1138 [2017]).

Claimant's testimony that his memory had been inaccurate at the time of the certifications due to a long-term medical condition was not established by the medical evidence submitted (see Matter of Rabess [Commissioner of Labor], 104 AD3d 988, 989 [2013]). Likewise, his claim that the certification question – "how many days did you work?" – referred to his job search efforts created a credibility issue that the Board rationally rejected (see Matter of Araman [Commissioner of Labor], 150 AD3d 1526, 1528 [2017]). As claimant attested in his weekly certifications, 22 times, that he had worked fewer days each week than he actually worked, and he was paid benefits to which he was not entitled based upon those false certifications, we find no reason to disturb either the Board's finding that he

made factually false, willful misrepresentations to obtain benefits or its imposition of recoverable overpayments and a penalty (see Labor Law §§ 594 [4]; 596 [1]; 597 [4]; Matter of Gray [Commissioner of Labor], 150 AD3d 1520, 1521 [2017]). Given that claimant made willful false statements, the one-year limitation on revising benefit determinations is inapplicable (see Labor Law § 597 [3]).

McCarthy, J.P., Lynch, Devine, Clark and Rumsey, 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