

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

Decided and Entered: May 23, 2019

527973

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In the Matter of the Claim of  
AMIR RAISSI,

Appellant.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,

Respondent.

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Calendar Date: April 19, 2019

Before: Lynch, J.P., Clark, Mulvey, Devine and Aarons, JJ.

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Amir Raissi, New York City, appellant pro se.

Letitia James, Attorney General, New York City (Gary Leibowitz of counsel), for respondent.

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Appeal from a decision of the Unemployment Insurance Appeal Board, filed January 31, 2019, which denied claimant's application to reopen and reconsider a prior decision.

Claimant applied for and received unemployment insurance benefits for the time period of September 4, 2017 to December 3, 2017. The Department of Labor issued a determination finding that claimant was ineligible to receive benefits because he was not totally unemployed during that time period, had made willful misrepresentations to obtain benefits and was responsible for a recoverable overpayment, a forfeiture penalty and a civil penalty. Following a hearing, an Administrative Law Judge (hereinafter ALJ), in a decision filed May 10, 2018, upheld the Department's determinations. By decision filed July 27, 2018, the Unemployment Insurance Appeal Board affirmed the ALJ's

finding. Claimant did not appeal to this Court from the Board's decision.

On November 19, 2018, claimant applied to the Board to reopen and reconsider its decision. In a December 7, 2018 decision, the Board denied the application as untimely and unsupported by an explanation for the delay. Claimant did not appeal the denial of this application to reopen and reconsider to this Court. On December 24, 2018, claimant again applied for the Board to reopen and reconsider its decision. In a decision filed January 31, 2019, the Board denied the application, and claimant appeals from that decision.

We affirm. Initially, insofar as claimant has not appealed from either the July 2018 decision or the December 2018 decision, any arguments regarding these decisions are not properly before this Court (see Matter of Pastore [Commissioner of Labor], 120 AD3d 874, 875 [2014]; Matter of Maldonado [Commissioner of Labor], 260 AD2d 885, 886 [1999]). As to the January 2019 decision, "[w]hether to grant an application to reopen and reconsider a prior decision is a matter committed to the Board's discretion and, absent an abuse of that discretion, the Board's decision will not be disturbed" (Matter of Basil [Commissioner of Labor], 153 AD3d 1547, 1547 [2017]; accord Matter of Tanasa [Commissioner of Labor], 164 AD3d 998, 999-1000 [2018]). Inasmuch as claimant offered no new evidence in support of his application that was not already considered by the Board, we find no abuse of the Board's discretion in denying the application (see Matter of Abreu [E. Armata, Inc. - Commissioner of Labor], 120 AD3d 1501, 1502 [2014], appeal dismissed 24 NY3d 1040 [2014]; Matter of Ford [Commissioner of Labor], 21 AD3d 1227, 1227 [2005]; Matter of Kendricks [Commissioner of Labor], 1 AD3d 682, 683 [2003]).

Lynch, J.P., Clark, Mulvey, Devine and Aarons, JJ.,  
concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive style with a large, stylized initial "R".

Robert D. Mayberger  
Clerk of the Court