

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

Decided and Entered: March 30, 2023

535397

In the Matter of the Claim of SETH
CHIN,

Appellant.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,
Respondent.

Calendar Date: February 10, 2023

Before: Garry, P.J., Lynch, Clark, Pritzker and Reynolds Fitzgerald, JJ.

Seth Chin, Elmont, appellant pro se.

Letitia James, Attorney General, New York City (*Linda D. Joseph* of counsel), for respondent.

Appeal from a decision of the Unemployment Insurance Appeal Board, filed August 24, 2021, which dismissed claimant's appeal from a decision of the Administrative Law Judge as untimely.

By decision dated May 20, 2021, an Administrative Law Judge (hereinafter ALJ) ruled, among other things, that claimant was ineligible to receive unemployment insurance benefits during the period that he certified for benefits because he was not totally unemployed. Claimant appealed the ALJ's decision by letter dated June 16, 2021. The Unemployment Insurance Appeal Board informed claimant that his appeal was untimely but that it would review his request to determine if good cause had been shown for the delay. By decision filed August 24, 2021, the Board dismissed claimant's appeal,

finding that the appeal was not filed within the 20-day statutory time period and that claimant did not provide any explanation for the delay. Claimant appeals.¹

We affirm. "Labor Law § 621 (1) provides that an appeal to the Board from a decision of an ALJ must be made within 20 days of the mailing or personal delivery of the decision, and this time requirement is strictly construed" (*Matter of Cromwell [Commissioner of Labor]*, 204 AD3d 1207, 1208 [3d Dept 2022] [internal quotation marks and citations omitted]; accord *Matter of Sainpaulin [Commissioner of Labor]*, 186 AD3d 1853, 1853 [3d Dept 2020]). The record reflects that claimant neither appealed the ALJ's decision within the applicable statutory time frame nor explained the delay. As such, the merits of the ALJ's decision are not properly before this Court, and the Board's decision dismissing claimant's appeal as untimely will not be disturbed (*see Matter of Cromwell [Commissioner of Labor]*, 204 AD3d at 1208; *Matter of Watts [Commissioner of Labor]*, 179 AD3d 1379, 1379 [3d Dept 2020]).

Garry, P.J., Lynch, Clark, Pritzker and Reynolds Fitzgerald, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court

¹ Although the record reflects that claimant's subsequent application for reopening and reconsideration was denied by the Board in a decision filed April 21, 2022, there is no indication that claimant filed a notice of appeal with respect thereto, and, therefore, that subsequent Board decision is not before this Court (*see Matter of Zion [Commissioner of Labor]*, 175 AD3d 1683, 1684 n [3d Dept 2019], *lv dismissed* 35 NY3d 938 [2020]).