

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

Decided and Entered: June 27, 2024

CV-23-0822

In the Matter of the Claim of JUSTIN
MARTIN,

Appellant.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,
Respondent.

Calendar Date: May 29, 2024

Before: Aarons, J.P., Pritzker, Lynch, Ceresia and Mackey, JJ.

Justin Martin, New York City, appellant pro se.

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

Ceresia, J.

Appeal from a decision of the Unemployment Insurance Appeal Board, filed December 22, 2022, which ruled, among other things, that claimant was ineligible to receive unemployment insurance benefits because he was not totally unemployed.

Claimant was the sole owner and employee of a small natural gas brokerage firm that he operated out of his home. Claimant, asserting that he closed the business on March 30, 2020, applied for unemployment insurance benefits. Based upon his certification from April 12, 2020 through September 5, 2021 that he was totally unemployed, claimant received benefits that included regular unemployment insurance benefits, federal pandemic unemployment compensation and lost wages assistance. The Department of Labor subsequently determined, among other things, that claimant was

ineligible to receive unemployment insurance benefits because he was not totally unemployed. Claimant appealed and, following multiple combined hearings, an Administrative Law Judge (hereinafter ALJ) ultimately upheld the denial of benefits, finding that claimant made willful false statements to obtain benefits for which he was not eligible because he was not totally unemployed. The ALJ also charged claimant with a recoverable overpayment of state and federal benefits, reduced his right to future benefits and imposed a civil penalty. Upon administrative appeal, the Unemployment Insurance Appeal Board affirmed the ALJ's decision, and this appeal ensued.

We affirm. Whether a claimant is totally unemployed and thereby eligible to receive unemployment insurance benefits is a factual issue for the Board to decide and its decision, if supported by substantial evidence, will not be disturbed (*see Matter of Cardella [Commissioner of Labor]*, 179 AD3d 1367, 1368 [3d Dept 2020]; *Matter of Boscarino [Commissioner of Labor]*, 117 AD3d 1145, 1146 [3d Dept 2014]). "It is well settled that a claimant who is a company officer and performs business-related activities on behalf of an ongoing corporation is not considered totally unemployed even if no income is received" (*Matter of Whyllie [Commissioner of Labor]*, 38 AD3d 1037, 1038 [3d Dept 2007] [citation omitted]; *see Matter of Pemberton [Commissioner of Labor]*, 166 AD3d 1202, 1203 [3d Dept 2018]). Profitability of the business is not determinative (*see Matter of Cardella [Commissioner of Labor]*, 179 AD3d at 1369; *Matter of Lasker [Commissioner of Labor]*, 155 AD3d 1236, 1237 [3d Dept 2017], *lv denied* 31 NY3d 907 [2018]; *Matter of Boscarino [Commissioner of Labor]*, 117 AD3d at 1147). "The pertinent inquiry is whether the claimant stands to benefit financially from the continued operation of the corporation" (*Matter of Singer [Commissioner of Labor]*, 30 AD3d 928, 929 [3d Dept 2006] [internal quotation marks and citations omitted]; *see Matter of Koenes [Commissioner of Labor]*, 30 AD3d 873, 874 [3d Dept 2006]), which can include the deduction of business expenses on personal income taxes for unemployment insurance purposes (*see Matter of Pemberton [Commissioner of Labor]*, 166 AD3d at 1203; *Matter of Burnette [Commissioner of Labor]*, 98 AD3d 785, 786 [3d Dept 2012]; *Matter of Singer [Commissioner of Labor]*, 30 AD3d at 929). Furthermore, "[i]ssues of witness credibility, the evaluation of evidence and the inferences to be drawn therefrom are within the exclusive province of the Board" (*Matter of Douglas [Commissioner of Labor]*, 217 AD3d 1311, 1312 [3d Dept 2023] [internal quotation marks and citations omitted]; *see Matter of Singer [Commissioner of Labor]*, 30 AD3d at 930).

Claimant's testimony established that, although he asserted that he did not work for the business after March 30, 2020, he continued to retain the services of an accountant and auditor, complied with necessary business requirements, maintained computer

platforms necessary for the operation of the business, wrote numerous business-related checks, including for rent for the apartment out of which he ran his business, and remained compliant with industry regulations all in an effort to continue the business in the hopes that clients would return. Further, claimant deducted business-related expenses and losses on his 2020 and 2021 personal income taxes. Moreover, the record established that, during the pandemic, claimant applied for and received a Paycheck Protection Program loan, which was deposited into the business account, to assist in paying expenses and received rent forgiveness for his apartment. In addition, claimant's responses on the Claimant Cash Wage Questionnaire, which at the hearing he initially affirmed were 100% accurate, contradicted his contention that he was not working or receiving wages during the relevant time period. Under these circumstances and deferring to the Board's finding that claimant's testimony was unreliable, evasive and inconsistent, substantial evidence supports the Board's finding that claimant was ineligible to receive unemployment insurance benefits because he was not totally unemployed and that he made willful false statements to obtain benefits (*see Matter of Pemberton [Commissioner of Labor]*, 166 AD3d at 1203-1204; *Matter of Burnette [Commissioner of Labor]*, 98 AD3d at 786). As claimant was ineligible to receive regular unemployment insurance benefits, he therefore was also not eligible for federal pandemic unemployment compensation or lost wage assistance benefits (*see* 15 USC § 9023 [f] [2]; 44 CFR 206.120 [f] [5]; *see also Matter of Cruz [Commissioner of Labor]*, 215 AD3d 1203, 1204 [3d Dept 2023]). We further find no basis to disturb the Board's consequential imposition of forfeiture of future unemployment benefits and civil penalties resulting from claimant's willful false statements (*see Matter of Cruz [Commissioner of Labor]*, 215 AD3d at 1205; *Matter of Boscarino [Commissioner of Labor]*, 117 AD3d at 1147-1148). To the extent not specifically addressed, claimant's remaining contentions are without merit.

Aarons, J.P., Pritzker, Lynch and Mackey, 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 style with a large, stylized initial "R".

Robert D. Mayberger
Clerk of the Court