

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

Decided and Entered: June 27, 2024

CV-23-1114

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In the Matter of the Claim of  
TIMOTHY HOOKER,  
Appellant.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,  
Respondent.

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Calendar Date: May 31, 2024

Before: Egan Jr., J.P., Reynolds Fitzgerald, Ceresia, Fisher and Mackey, JJ.

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*Timothy Hooker*, Pleasantville, appellant pro se.

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

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Ceresia, J.

Appeal from a decision of the Unemployment Insurance Appeal Board, filed November 28, 2022, which ruled that claimant's request for a hearing was untimely.

By initial determination dated April 4, 2022, the Department of Labor notified claimant that he was ineligible to receive unemployment insurance benefits for the period beginning April 27, 2020 and ending April 25, 2021 because he was not totally unemployed, and that he was being charged with recoverable overpayments and a civil penalty. Although the determination advised claimant that he had 30 days from the mailing date in which to request a hearing, claimant did not request a hearing until June 30, 2022. At the conclusion of a hearing, an Administrative Law Judge sustained the

Department's timeliness objection and continued in effect the initial determination. The Unemployment Insurance Appeal Board affirmed, prompting this appeal.

We affirm. "Labor Law § 620 (1) (a) provides that a claimant who is dissatisfied with an initial determination issued by the Department [on a claim for benefits] must request a hearing within 30 days of the date of mailing or personal delivery of the determination, unless he or she is prevented from doing so by physical or mental incapacity" (*Matter of Bernardone [Commissioner of Labor]*, 224 AD3d 1049, 1050 [3d Dept 2024] [internal quotation marks and citations omitted]). The initial determination, dated April 4, 2022, advised claimant of the Department's determination on his claim, i.e., the denial of benefits, his right to appeal and the 30-day timeline for doing so. "Absent proof to the contrary, an initial determination of the [C]ommissioner [of Labor] shall be deemed to have been mailed on the date recited on the initial determination and received by [the] party to whom it is addressed no later than five business days after the date on which it is mailed" (12 NYCRR 461.1 [a]). "The statutory time limits are strictly construed" (*Matter of Macdonald [Commissioner of Labor]*, 221 AD3d 1166, 1167 [3d Dept 2023] [internal quotation marks and citations omitted]).

Claimant testified that he received the initial determination, although he could not recollect when, and, thus, it is deemed to have been mailed on April 4, 2022 and received five business days later, on April 11, 2022. Claimant acknowledged that he did not mail his request for a hearing until June 30, 2022, well beyond the 30-day statutory deadline. Claimant admitted that he did not recall reading the notice in the determination that he had 30 days to request a hearing, which did not excuse his untimely request. Although he testified that he electronically submitted documents concerning his loss of income to the Department on April 12, 2022, he acknowledged at the hearing that those documents did not include a request for a hearing regarding the determination. Given the foregoing and noting that claimant did not allege that he had a physical or mental condition that prevented him from complying with the 30-day time limit, the Board's decision will not be disturbed (*see Matter of Bernardone [Commissioner of Labor]*, 224 AD3d at 1051; *Matter of Macdonald [Commissioner of Labor]*, 221 AD3d at 1167; *Matter of Moskovits [Commissioner of Labor]*, 219 AD3d 1652, 1654 [3d Dept 2023]). To the extent that claimant now contends that his request was untimely because he was overwhelmed with stress in that he had resumed his paid extracurricular positions in addition to full-time teaching, this explanation was not raised in the administrative proceedings and, therefore, is not properly before us (*see Matter of Cavlak [Language Servs. Assoc., Inc. - Commissioner of Labor]*, 202 AD3d 1178, 1181 [3d Dept 2022]).

Egan Jr., J.P., Reynolds Fitzgerald, Fisher 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, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court