

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

Decided and Entered: May 16, 2024

CV-23-1412

---

In the Matter of the Claim of  
ANGELA AIELLO,

Appellant.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,

Respondent.

---

Calendar Date: March 29, 2024

Before: Garry, P.J., Clark, Pritzker, Ceresia and Mackey, JJ.

---

*Angela Aiello*, Brooklyn, appellant pro se.

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

---

Ceresia, J.

Appeal from a decision of the Unemployment Insurance Appeal Board, filed January 30, 2023, which denied an application by claimant to reopen and reconsider a prior decision.

Since 2012, claimant worked as a full-time paraprofessional for the New York City Department of Education (hereinafter NYCDOE), and she held a second job with the P.S. 29 Parent Teachers' Association (hereinafter PTA). In March 2020, claimant's employment with the PTA ended, and claimant was advised by the PTA that she could collect, among other things, partial unemployment insurance benefits. In April 2020, claimant filed a claim, effective March 9, 2020, for unemployment insurance benefits, and she received state and federal benefits at a set rate. In an October 5, 2021 revised

notice of determination, the Department of Labor found that claimant was ineligible to receive unemployment insurance benefits, effective March 16, 2020 through March 14, 2021, because she was a salaried employee during the relevant time period for the NYCDOE, and she was therefore not totally unemployed. The Department also charged claimant with recoverable overpayment of the state and federal benefits received and imposed a monetary penalty and forfeiture of future benefit days based upon a finding that claimant made willful false statements to obtain those benefits. Following a hearing, an Administrative Law Judge, among other things, sustained the Department's determination. Upon administrative appeal, the Unemployment Insurance Appeal Board affirmed the decision of the Administrative Law Judge in an October 13, 2022 decision. Thereafter, in a December 6, 2022 letter to the Board, claimant made an application to reopen and reconsider the Board's October 13, 2022 decision.<sup>1</sup> By decision filed January 30, 2023, the Board denied claimant's application for reopening and reconsideration, finding that "claimant did not provide any new material evidence or new argument in the application that would affect the result of the previous Board decision[ ]." Claimant appeals.

We affirm. "A decision as to whether to grant an application to reopen a decision is within the sound discretion of the Board and, absent a showing that it abused that discretion, its decision will not be disturbed" (*Matter of Paka [Same Day Delivery Inc.-Commissioner of Labor]*, 213 AD3d 1050, 1051 [3d Dept 2023] [internal quotation marks, brackets and citations omitted]; *see Matter of Saintalbord [Premier Care Staffing, Inc.-Commissioner of Labor]*, 146 AD3d 1256, 1256 [3d Dept 2017]; *see generally* Labor Law § 534; 12 NYCRR 463.6 [a]). With that said, having reviewed the record and claimant's application, we find no abuse of discretion by the Board in denying the application to reopen and reconsider (*see Matter of Komar [Commissioner of Labor]*, 213 AD3d 1085, 1086 [3d Dept 2023]; *Matter of Battaglia [Commissioner of Labor]*, 177 AD3d 1074, 1075 [3d Dept 2019]).

Garry, P.J., Clark, Pritzker and Mackey, JJ., concur.

---

<sup>1</sup> In that letter, claimant also asked to appeal from the Board's October 13, 2022 decision. However, to the extent that her letter can be construed as a notice of appeal, it was filed well after the 30-day time period and is therefore untimely (*see* Labor Law § 624; *Matter of Hart [Commissioner of Labor]*, 153 AD3d 1549, 1550 [3d Dept 2017]; *Matter of Clark [Commissioner of Labor]*, 153 AD3d 1074, 1075 [3d Dept 2017]; *Matter of Welsh [Commissioner of Labor]*, 51 AD3d 1351, 1351 [3d Dept 2008]).

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 'R' and 'M'.

Robert D. Mayberger  
Clerk of the Court