

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

Decided and Entered: December 5, 2024

CV-23-1915

In the Matter of the Claim of JOSEPH
SPELLEN,

Appellant.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,
Respondent.

Calendar Date: November 8, 2024

Before: Garry, P.J., Clark, Pritzker, Fisher and Powers, JJ.

Joseph Spellen, Brooklyn, appellant pro se.

Letitia James, Attorney General, New York City (*Camille J. Hart* of counsel), for respondent.

Appeal from a decision of the Unemployment Insurance Appeal Board, filed September 5, 2023, which denied claimant's application for reopening and reconsideration of a prior decision.

By decision filed June 2, 2023, the Unemployment Insurance Appeal Board affirmed a decision finding claimant ineligible to receive unemployment insurance benefits because he did not return a questionnaire sent by the Department of Labor seeking pertinent information regarding his receipt of disability benefits and thus did not comply with registration requirements. By decision filed September 5, 2023, claimant's subsequent application for reopening and reconsideration, which was untimely and did not set forth an explanation for the delay, was denied. Claimant again requested

reopening and reconsideration, which the Board also denied. Claimant appeals from the Board's September 2023 decision.¹

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 Aiello [Commissioner of Labor]*, 227 AD3d 1256, 1257 [3d Dept 2024] [internal quotation marks and citations omitted]). Claimant raises no arguments regarding the denial of the application to reopen and/or reconsider the Board's prior decision, and our review of the record does not disclose any basis to disturb the Board's denial of claimant's application in this regard (*see Matter of Paka [Same Day Delivery Inc.-Commissioner of Labor]*, 213 AD3d 1050, 1051 [3d Dept 2023]; *Matter of Shaw [Commissioner of Labor]*, 197 AD3d 1451, 1451 [3d Dept 2021]). To the extent that he challenges the underlying merits of the Board's decision finding that he was ineligible to receive unemployment insurance benefits, such arguments are not properly before us (*see Matter of Shaw [Commissioner of Labor]*, 197 AD3d at 1451-1452).

Garry, P.J., Clark, Pritzker, Fisher and Powers, 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

¹ Claimant's appeal from the Board's June 2023 decision was not perfected within six months from the filing of the notice of appeal, and, as such, the appeal was deemed dismissed by operation of law pursuant to 22 NYCRR 1250.10.