

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

Decided and Entered: October 31, 2024

CV-24-0514

In the Matter of the Claim of
MARGARITA JIMENO,
Appellant.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,
Respondent.

Calendar Date: October 4, 2024

Before: Egan Jr., J.P., Clark, Lynch, Reynolds Fitzgerald and Fisher, JJ.

Margarita Jimeno, Brooklyn, appellant pro se.

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

Appeal from a decision of the Unemployment Insurance Appeal Board, filed September 8, 2023, which denied claimant's application to reopen/reconsider a prior decision.

The Department of Labor issued determinations on November 13, 2020 finding claimant ineligible to receive unemployment insurance benefits and charged her with, among other things, a recoverable overpayment of benefits. Claimant requested a hearing on the determinations. Various proceedings ensued and a hearing was held at which claimant appeared. In a July 2022 decision, an Administrative Law Judge (hereinafter ALJ) modified the dates of claimant's periods of ineligibility and overruled one determination of ineligibility but otherwise upheld the determinations. Nearly one year later, by letter dated June 15, 2023, claimant appealed the ALJ's decision to the Unemployment Insurance Appeal Board.

In a combined decision dated June 29, 2023, the Board dismissed claimant's appeal as untimely. On August 9, 2023, claimant applied to reopen and reconsider the Board's June 2023 decision.¹ By a September 8, 2023 decision, the Board denied claimant's belated application because she failed to timely apply for reopening or reconsideration of the June 2023 decision or to provide a sufficient explanation for the delay.² Claimant appeals from the Board's September 8, 2023 decision.

Although claimant appeals from the Board's decision denying her request for reopening and reconsideration, she raises no arguments in her brief with respect thereto and, thus, has abandoned any related claims (*see Matter of Tracy [Commissioner of Labor]*, 224 AD3d 1058, 1059 [3d Dept 2024]; *Matter of Lynch [Commissioner of Labor]*, 217 AD3d 1309, 1310 n [3d Dept 2023]; *Matter of Stack [City of Glens Falls-Commissioner of Labor]*, 165 AD3d 1362, 1363 n [3d Dept 2018]), notwithstanding her attempt to belatedly address such issue for the first time in her reply brief (*see Matter of Dinger [Bend Entertainment, LLC-Commissioner of Labor]*, 193 AD3d 1132, 1133 [3d Dept 2021]). In any event, inasmuch as the record reflects that claimant failed to timely appeal from or apply to reopen the Board's June 2023 decision, we conclude that the Board did not abuse its discretion in denying her belated application (*see Matter of Battaglia [Commissioner of Labor]*, 177 AD3d 1074, 1075 [3d Dept 2019]; *Matter of Basil [Commissioner of Labor]*, 153 AD3d 1547, 1547-1548 [3d Dept 2017]). As "[t]he denial of an application for reopening and reconsideration will only bring up for review the merits of the original determination when the application is made within the 30-day period during which that original determination could be appealed," claimant's arguments challenging the Board's underlying June 2023 decision are not properly before us (*Matter of Wood [Commissioner of Labor]*, 24 AD3d 854, 855 [3d Dept 2005] [internal quotation marks and citation omitted]; *see Matter of Battaglia [Commissioner of Labor]*, 177 AD3d at 1075; *Matter of Mercado [American Para Professional Sys. of NYC, Inc.-Commissioner of Labor]*, 175 AD3d 1734, 1735 [3d Dept 2019]; *Matter of Mena [Philips Bryant Park, LLC-Commissioner of Labor]*, 164 AD3d 1510, 1511 [3d Dept 2018]).

Egan Jr., J.P., Clark, Lynch, Reynolds Fitzgerald and Fisher, JJ., concur.

¹ The record does not indicate that claimant filed a timely appeal from the Board's June 29, 2023 decision.

² Claimant's subsequent application to reopen and reconsider the Board's September 2023 decision was denied by the Board in an October 2023 decision.

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, prominent "R" and "M".

Robert D. Mayberger
Clerk of the Court