

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

In re the Claim of Dialah

114 A.D.3d 986 (N.Y. App. Div. 2014) · Decided February 6, 2014

SUMMARY

The court affirmed the Unemployment Insurance Appeal Board's determination that the claimant was disqualified from receiving benefits because his employment was terminated for misconduct. The court held that substantial evidence supported the finding that the claimant committed disqualifying insubordination by refusing to make a petty-cash bank deposit, an assigned job duty, without a compelling reason.

CASE DETAILS

|                       |                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Appellate Division of the Supreme Court of the State of New York, Third Department                                                                                                                      |
| WRITING FOR THE COURT | Lahtinen, J.P.; McCarthy, J.; Rose, J.; Egan Jr., J.                                                                                                                                                    |
| JURISDICTION          | New York                                                                                                                                                                                                |
| DECIDED               | February 6, 2014                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Claimant appealed from a decision of the Unemployment Insurance Appeal Board that disqualified him from receiving unemployment insurance benefits because his employment was terminated for misconduct. |
| STANDARD OF REVIEW    | The court reviewed whether substantial evidence supported the Unemployment Insurance Appeal Board's determination and deferred to the Board's credibility determinations.                               |
| PRECEDENTIAL VALUE    | Published precedential opinion                                                                                                                                                                          |
| PARTIES               | Claimant v. Commissioner of Labor                                                                                                                                                                       |

TOPICS

- unemployment benefits
- administrative law
- standard of review
- appellate procedure
- employment law

PRACTICE AREAS

**QUESTIONS PRESENTED**

1. Whether claimant's refusal to comply with the employer's directive to make a bank deposit constituted disqualifying misconduct under the unemployment insurance law.
2. Whether substantial evidence supported the Unemployment Insurance Appeal Board's determination that claimant was disqualified from receiving benefits.

**HOLDINGS**

1. An employee's failure to comply with an employer's reasonable request may constitute insubordination rising to the level of disqualifying misconduct.
2. Substantial evidence supported the Board's determination that claimant was disqualified from receiving unemployment insurance benefits, and the court declined to disturb it.

**KEY QUOTATIONS**

*“an employee’s failure to comply with an employer’s reasonable request may constitute insubordination rising to the level of disqualifying misconduct”* (114 A.D.3d at 986)

**FACTUAL BACKGROUND**

Claimant worked as a junior accountant for an organization assisting disabled individuals. He was terminated for insubordination after refusing to make a petty-cash deposit at the organization's bank, despite the task being part of his regular job duties. Employer witnesses testified that claimant had previously engaged in similar insubordinate conduct, had received warnings, and had been warned that continued refusal would result in termination.

**PROCEDURAL HISTORY**

The Department of Labor initially denied claimant's application for unemployment insurance benefits. An Administrative Law Judge sustained that determination after a hearing, and the Unemployment Insurance Appeal Board affirmed. The Appellate Division affirmed the Board's decision.

**DISPOSITION**

affirmed

**CASES CITED**

- Matter of Ortiz [New York Eye & Ear Infirmary—Commissioner of Labor], 97 A.D.3d 885, 886 (2012)
- Matter of Tosca [Commissioner of Labor], 81 A.D.3d 1061, 1061-1062 (2011)
- Matter of Aguasvivas [Commissioner of Labor], 98 A.D.3d 787, 787-788 (2012)
- Matter of Smith [Rochester Inst. of Tech.—Commissioner of Labor], 68 A.D.3d 1431, 1432 (2009)

- Matter of Simkhayeva [Touro Coll.—Commissioner of Labor], 65 A.D.3d 1415 (2009)

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