

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

Matter of Guarnieri (Commissioner of Labor)

2021 NY Slip Op 01468 (App. Div. 2021) · No. 531746 · Decided March 11, 2021

SUMMARY

The Appellate Division, Third Department, affirmed a determination that Victoria Guarnieri was ineligible for additional unemployment insurance benefits because she had not filed a subsequent valid original claim under Labor Law § 527 (6). The court held that payments received during periods of suspension did not constitute remuneration for work in employment because claimant performed no work during the relevant period. The court found substantial evidence supporting the Unemployment Insurance Appeal Board's determination.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Garry, P.J.; Lynch, J.; Clark, J.; Aarons, J.; Pritzker, J.
JURISDICTION	New York
DECIDED	March 11, 2021
DOCKET	531746
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed from a decision of the Unemployment Insurance Appeal Board ruling that she was ineligible for further unemployment insurance benefits because she had not satisfied the statutory work and remuneration requirements for filing a subsequent valid original claim.
STANDARD OF REVIEW	Whether substantial evidence supported the Unemployment Insurance Appeal Board's determination.
PRECEDENTIAL VALUE	published and precedential New York Appellate Division decision
PARTIES	Victoria Guarnieri v. Commissioner of Labor

TOPICS

unemployment benefits administrative law statutory interpretation judicial review of agency action
appellate procedure

PRACTICE AREAS

unemployment insurance

administrative law

employment law

QUESTIONS PRESENTED

1. Whether payments received during a paid suspension constituted remuneration for work in employment under Labor Law § 527(6), thereby satisfying the requirement for filing a subsequent valid original claim for unemployment benefits.
2. Whether substantial evidence supported the Unemployment Insurance Appeal Board's determination that claimant had not worked in employment and been paid sufficient remuneration to requalify for benefits.

HOLDINGS

1. Payments received by a suspended employee do not constitute remuneration for work in employment when the employee performed no work during the suspension, and therefore do not count toward the statutory requirement for filing a subsequent valid original claim.
2. Substantial evidence supported the Board's determination that claimant had not worked in employment and received sufficient remuneration to file a subsequent valid original claim.

KEY QUOTATIONS

*"To file a subsequent valid original claim, claimant "must have worked in employment and been paid remuneration for such work since the beginning of such previous claim in an amount equal to at least [10] times the claimant's weekly benefit rate"" (*1)*

*"We perceive nothing unreasonable in that distinction, which comports with the statutory language, and therefore find substantial evidence in the record to support the Board's determination that claimant had not "worked in employment and been paid remuneration for such work" in a sufficient amount to file a subsequent valid original claim" (*2)*

FACTUAL BACKGROUND

Claimant was suspended without pay for several 30-day periods beginning in October 2017, with brief periods of paid suspension between them, while disciplinary charges were pending. She filed an unemployment claim effective January 15, 2018 and received benefits. She was later suspended with pay effective January 30, 2018, performed no further work for the employer, and was terminated on January 25, 2019. She then filed a subsequent claim, but the Board found that she lacked sufficient wages from work performed after the beginning of her prior claim to requalify.

PROCEDURAL HISTORY

After claimant filed a subsequent claim for unemployment benefits effective January 28, 2019, the Department of Labor determined that she was ineligible. An Administrative Law Judge upheld that determination, and the Unemployment Insurance Appeal Board affirmed. The Appellate Division affirmed the Board's decision.

DISPOSITION

affirmed

CASES CITED

- Matter of Santiago (Commissioner of Labor), 63 A.D.3d 1357, 1357 (3d Dep't 2009)
- Matter of Mazurkiewicz (Commissioner of Labor), 13 A.D.3d 770, 771 (3d Dep't 2004)
- Matter of Odell (Sweeney), 233 A.D.2d 663, 663-664 (3d Dep't 1996)
- Matter of Rappaport (Town of Mamaroneck—Hartnett), 144 A.D.2d 141, 142 (3d Dep't 1988), leave to appeal denied, 74 N.Y.2d 616 (1989)
- Matter of Caltabiano (Levine), 50 A.D.2d 979, 980 (3d Dep't 1975)
- Matter of Appeal Board Decision No. 569753, June 5, 2013

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