

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

In re the Claim of Rabess

104 A.D.3d 988 (N.Y. App. Div. 2013) · Decided March 7, 2013

SUMMARY

The New York Appellate Division, Third Department affirmed a decision finding the claimant ineligible for unemployment insurance benefits because he was not totally unemployed while working and certifying for benefits. The court also upheld the recoverable overpayment and forfeiture penalty based on substantial evidence that the claimant made willful false statements.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Spain, J.; McCarthy, J.; Egan Jr., J.
JURISDICTION	New York
DECIDED	March 7, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed an Unemployment Insurance Appeal Board decision affirming an Administrative Law Judge's determination that claimant was ineligible for unemployment benefits, had received a recoverable overpayment, and was subject to a forfeiture penalty for willful false statements.
STANDARD OF REVIEW	Whether substantial evidence supports the Unemployment Insurance Appeal Board's determination; the Board resolves credibility issues.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Claimant v. Commissioner of Labor

TOPICS

unemployment benefits administrative law appellate procedure standard of review preservation of error

PRACTICE AREAS

Unemployment insurance Administrative law Appellate procedure

QUESTIONS PRESENTED

1. Whether substantial evidence supported the determination that claimant was ineligible for unemployment benefits because he was not totally unemployed.
2. Whether substantial evidence supported the recoverable overpayment and 32-day forfeiture penalty based on claimant's certifications while working and the finding of willful false statements.
3. Whether claimant's mental-condition defense defeated the finding that his conduct was intentional.
4. Whether claimant could raise an identity-theft argument for the first time on appeal.

HOLDINGS

1. The Board's determination that claimant was ineligible for unemployment benefits because he was not totally unemployed was supported by substantial evidence.
2. The Board was entitled to reject claimant's assertion that a mental disorder rendered his certifications unintentional because his medical documentation did not substantiate that his condition impaired his awareness to that extent, and the related credibility issue was for the Board to resolve.
3. Claimant's assertion that identity theft caused his benefit certifications was not properly before the Appellate Division because he had not raised it at the administrative hearing.

KEY QUOTATIONS

"Claimant's further assertion that his certification for benefits was the result of identity theft was not raised at the hearing and is not properly before us." (989)

FACTUAL BACKGROUND

Claimant obtained another job at which he earned \$650 per week between November 8, 2010, and December 5, 2010, but continued to certify for unemployment benefits and received \$448 in emergency unemployment compensation and \$100 in federal additional compensation. The Department of Labor found him ineligible because he was not totally unemployed, imposed a recoverable overpayment of \$548, and assessed a 32-day forfeiture penalty after finding that he made willful false statements. Claimant admitted at the hearing that he certified for benefits while working, but argued that a mental disorder made his conduct unintentional and later asserted that identity theft caused the certifications.

PROCEDURAL HISTORY

After receiving unemployment benefits, claimant obtained work and earned \$650 per week from November 8, 2010, through December 5, 2010, while continuing to certify for benefits. The Department of Labor determined that he was ineligible during that period, charged him with a \$548 recoverable overpayment, and imposed a 32-day forfeiture penalty. An Administrative Law Judge upheld the determination, and the Unemployment Insurance Appeal Board affirmed. The Appellate Division affirmed the Board's decision.

DISPOSITION

affirmed

CASES CITED

- Matter of Ramdhani [Commissioner of Labor], 98 A.D.3d 1183, 1184 (2012)
- Matter of Hurley [Commissioner of Labor], 67 A.D.3d 1153, 1154 (2009)
- Matter of Masterpaul [Commissioner of Labor], 76 A.D.3d 729, 729-730 (2010)

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