

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

Matter of the Claim of Matthew R. Cerick

Matter of Cerick · No. 518365 · Decided September 18, 2014

SUMMARY

The New York Supreme Court, Appellate Division, Third Department reversed an Unemployment Insurance Appeal Board decision denying Matthew R. Cerick's application to reopen a default decision. The court held that the Board abused its discretion because the claimant and employer had jointly requested an adjournment based on a tentative settlement and reasonably believed that they were not required to appear. The matter was remitted to the Board for consideration on the merits.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Judicial Department
WRITING FOR THE COURT	Lahtinen, J.P.; Stein, J.; Garry, J.; Rose, J.; Devine, J.
JURISDICTION	New York
DECIDED	September 18, 2014
DOCKET	518365
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Claimant appealed from a decision of the Unemployment Insurance Appeal Board that, among other things, denied his application to reopen a prior default decision and sustained the determination finding him ineligible for unemployment insurance benefits.
STANDARD OF REVIEW	Whether to reopen a default decision is reviewed for abuse of the Unemployment Insurance Appeal Board's sound discretion.
PRECEDENTIAL VALUE	published
PARTIES	Matthew R. Cerick v. Commissioner of Labor

TOPICS

- unemployment benefits
- administrative law
- judicial review of agency action
- appellate procedure
- standard of review

PRACTICE AREAS

administrative law

employment law

unemployment benefits

appellate procedure

QUESTIONS PRESENTED

1. Whether the Unemployment Insurance Appeal Board abused its discretion by denying claimant's application to reopen the August 2011 default decision.
2. Whether the circumstances surrounding the jointly requested adjournment established good cause for claimant's failure to appear at the hearing.

HOLDINGS

1. A party seeking to reopen a default decision must demonstrate good cause for the default, and the determination whether to reopen is reviewed for abuse of the Unemployment Insurance Appeal Board's discretion.
2. Claimant demonstrated good cause because claimant's counsel and the employer's counsel jointly requested an adjournment based on a tentative settlement, and both sides reasonably, though mistakenly, assumed that appearing at the hearing was unnecessary; the Board therefore abused its discretion by refusing to reopen the default decision.

KEY QUOTATIONS

"It is axiomatic that the party seeking to reopen a decision must demonstrate good cause for the default" (at 2)

"In light of these circumstances, we find that the August 2011 default decision should have been reopened" (at 3)

FACTUAL BACKGROUND

The Department of Labor found claimant ineligible for unemployment benefits effective May 5, 2011, concluding that he voluntarily left employment without good cause. Before the August 2011 hearing, claimant's counsel and the employer's counsel jointly requested an adjournment by fax because they had reached a tentative settlement. Neither claimant nor the employer appeared, and a default decision was issued after the parties apparently assumed in good faith that their appearance was unnecessary.

PROCEDURAL HISTORY

The Department of Labor initially determined that claimant was ineligible for benefits because he voluntarily left employment without good cause. After claimant and the employer failed to appear at a scheduled hearing, the ALJ issued a default decision. The Unemployment Insurance Appeal Board dismissed claimant's administrative appeal and remitted the matter to the ALJ to treat it as an application to reopen the default decisions. On remittal, the ALJ denied reopening of the August 2011 default decision and sustained the initial determination, and the Board upheld that decision.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remitted to the Unemployment Insurance Appeal Board for consideration on the merits and further proceedings not inconsistent with the court's decision.

CASES CITED

- Matter of Tavares [Commissioner of Labor], 118 AD3d 1243, 1244 (2014)
- Matter of Lee [Commissioner of Labor], 84 AD3d 1652, 1653 (2011)
- Matter of Childs [Kaleida Health–Commissioner of Labor], 69 AD3d 1070, 1071 (2010), lv dismissed, 18 NY3d 837 (2011)
- Matter of Romano [Buffalo Bd. of Educ.-Commissioner of Labor], 256 AD2d 845, 845 (1998)
- Matter of Cedeno [Commissioner of Labor], 83 AD3d 1350, 1351 (2011)

OPINION

PER CURIAM.

State of New York Supreme Court, Appellate Division Third Judicial Department Decided and Entered: September 18, 2014 518365 _____ In the Matter of the Claim of MATTHEW R. CERICK, Appellant. MEMORANDUM AND ORDER COMMISSIONER OF LABOR, Respondent. _____ Calendar Date: August 4, 2014 Before: Lahtinen, J.P., Stein, Garry, Rose and Devine, JJ. _____ Matthew R. Cerick, Fairfax, appellant pro se.

Eric T. Schneiderman, Attorney General, New York City (Gary Leibowitz of counsel), for respondent. _____ Appeal from a decision of the Unemployment Insurance Appeal Board, filed April 5, 2013, which, among other things, denied claimant's application to reopen a prior decision.

The Department of Labor issued an initial determination finding that, effective May 5, 2011, claimant was ineligible to receive unemployment insurance benefits because he voluntarily left his employment without good cause.

After claimant submitted a hearing request, a hearing was scheduled for August 11, 2011. However, neither claimant nor the employer appeared for the hearing and a default decision was issued by the Administrative Law Judge (hereinafter ALJ).¹ On administrative appeal, the ¹ Two subsequent hearings were scheduled in November 2011 and January 2012. Additional default decisions were issued upon claimant's failure to appear at either of those hearings. -2- 518365 Unemployment Insurance Appeal Board dismissed the appeal and remitted the matter to the ALJ to treat the appeal as an application to reopen the default decisions.

On remittal, the ALJ conducted a hearing and, among other things, denied claimant's application to reopen the August 2011 default decision and sustained the initial determination.² The Board upheld the ALJ's decision and this appeal by claimant ensued.

We reverse. It is axiomatic that the party seeking to reopen a decision must demonstrate good cause for the default (see 12 NYCRR 461.8; *Matter of Tavares* [Commissioner of Labor], 118 AD3d 1243, 1244 [2014]), and the determination whether to grant such an application will not be disturbed absent an abuse of the Board's sound discretion (see *Matter of Lee* [Commissioner of Labor], 84 AD3d 1652, 1653 [2011]; *Matter of Childs* [Kaleida Health–Commissioner of Labor], 69 AD3d 1070, 1071 [2010], lv dismissed 18 NY3d 837 [2011]).

Under the circumstances here, we are of the view that the Board abused its discretion in finding that claimant did not demonstrate good cause for his failure to appear at the August 2011 hearing and, therefore, in denying claimant's application to reopen the default decision rendered as a result thereof (see generally *Matter of Romano* [Buffalo Bd. of Educ.–Commissioner of Labor], 256 AD2d 845, 845 [1998]).

Sometime prior to the scheduled commencement of the August 2011 hearing, counsel for claimant and the employer jointly – through a letter faxed by the employer's counsel to the ALJ at the hearing site – requested an adjournment in light of the fact that they had reached a tentative settlement.³ While we agree with the Board that the granting of the adjournment should have been verified before a decision was made not to appear at the hearing, it is evident that all parties assumed in good faith ² The ALJ determined that claimant had good cause for failing to appear at the second and third hearings, and granted claimant's applications to reopen those default decisions.

³ We note that the employer advises that it does not object to claimant's receipt of unemployment benefits and has not opposed the relief requested in the instant appeal. -3- 518365 that their appearance was not required, as neither claimant's counsel nor the employer appeared for the hearing. Indeed, it is questionable whether the hearing would have proceeded in their absence even if claimant had appeared.

In light of these circumstances, we find that the August 2011 default decision should have been reopened and, therefore, the decision is reversed and the matter remitted for consideration on the merits (compare *Matter of Cedenio* [Commissioner of Labor], 83 AD3d 1350, 1351 [2011]). Lahtinen, J.P., Stein, Garry, Rose and Devine, JJ., concur. ORDERED that the decision is reversed, without costs, and matter remitted to the Unemployment Insurance Appeal Board for further proceedings not inconsistent with this Court's decision.

ENTER: Robert D. Mayberger Clerk of the Court

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