Matter of Schachter (Commissioner of Labor)

2026 NY Slip Op 05359

September 17, 2026

Appellate Division, Third Department

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In the Matter of the Claim of Lawrence Schachter, Appellant. Commissioner of Labor, Respondent.

Decided and Entered: September 17, 2026

CV-25-1315

Calendar Date: September 8, 2026

Before: Pritzker, J.P., Ceresia, Powers, Corcoran And Ryba, JJ.

Lawrence Schachter, New York City, appellant pro se.

Letitia James, Attorney General, New York City (Dawa Jung-Acosta of counsel), for respondent.

[*1]

Pritzker, J.P.

Appeal from a decision of the Unemployment Insurance Appeal Board, filed February 10, 2025, which ruled, among other things, that claimant was ineligible to receive unemployment insurance benefits because he received dismissal pay.

Claimant was employed full time as director of technology for the employer, a real estate investment and property management company, for approximately two years and eight months. On his last day of employment in June 2023, claimant received an agreement and general release (hereinafter the agreement) providing that he would receive a substantial payment in two installments in consideration for his signature, which he signed and returned several weeks later. Before returning the agreement, claimant filed for unemployment insurance benefits and certified that he had not received and would not be receiving a lump sum dismissal or severance payment, and he further would not receive any payments after the effective date. Claimant proceeded to certify for benefits on a weekly basis and received the maximum benefit for 26 weeks, starting on July 3, 2023.

The Department of Labor subsequently issued initial determinations that claimant was ineligible to receive benefits for the period of July 3, 2023 through December 31, 2023, finding that he received dismissal or severance pay, charging him with an overpayment of benefits and imposing monetary penalties as well as the loss of rights to future benefits for eight effective days on the basis that he made a willful misrepresentation to obtain benefits. Following a hearing at claimant's request, an Administrative Law Judge (hereinafter ALJ) sustained the initial determinations in a combined decision and, upon administrative appeal, the Unemployment Insurance Appeal Board affirmed the ALJ's decision. Claimant appeals.

We affirm. A decision of the Board "will be upheld if supported by substantial evidence" (Matter of Sharma [Commissioner of Labor], 245 AD3d 1086, 1087 [3d Dept 2026] [internal quotation marks and citations omitted]; see Matter of Gaffney [Commissioner of Labor], 243 AD3d 1007, 1008 [3d Dept 2025]). As relevant here, "[n]o benefits shall be payable to a claimant for any week during a dismissal period for which a claimant receives dismissal pay, nor shall any day within such week be considered a day of total unemployment . . . if such weekly dismissal pay exceeds the maximum weekly benefit rate" (Labor Law § 591 [6] [former (a)]). Dismissal pay refers to "one or more payments made by an employer to an employee due to his or her separation from service of the employer regardless of whether the employer is legally bound by contract, statute or otherwise to make such payments," with some exceptions not relevant here (Labor Law § 591 [6] [b]). In terms of the dismissal period, "[i]f no time period is designated, the dismissal period shall commence on the day after the claimant's last day of employment. If the dismissal payment is in a lump sum amount or for an indefinite [*2]period, dismissal payments shall be allocated on a weekly basis from the day after the claimant's last day of employment and the claimant shall not be eligible for benefits for any week for which it is determined that the claimant receives dismissal pay. The amount of dismissal pay shall be allocated based on the claimant's actual weekly remuneration paid by the employer during his or her employment" (Labor Law § 591 [6] [c]).

Claimant testified before the ALJ that he received the first installment of the payment on July 21, 2023. Though claimant argues that the payment was not due to his separation from employment and was instead "made solely for compliance with the terms of the [a]greement," the employer's witness, its HR director, and claimant each testified that claimant would not have received the payment unless he had been separated from his employment. Further, the employer's witness testified that the payroll stub generated by the employer's payroll manager identified the payment as "severance," which was customary for all such agreements offered by the employer. Accordingly, substantial evidence supports the Board's decision that the payment was intended as dismissal pay as the same "became due and payable only by reason of claimant['s] severance" (Matter of Walker [Reader's Digest-Catherwood], 28 AD2d 256, 260 [3d Dept 1967]; see Matter of Faccio [Catherwood], 37 AD2d 633, 633 [3d Dept 1971], affd 31 NY2d 702 [1972]). Consequently, as the initial installment of the payment was made within 30 days of claimant's last day of employment (see Labor Law § 591 [6] [d]), claimant was ineligible for benefits until the weekly allocation of the payment based upon his earnings during his employment no longer exceeded the maximum weekly benefit rate (see Labor Law § 591 [6] [former (a)], [c]). The record reflects that claimant's last day of employment was June 28, 2023, resulting in his dismissal period beginning on June 29, 2023 (see Labor Law § 591 [6] [c]). Using claimant's weekly remuneration to allocate the entirety of the payment shows that his weekly dismissal pay exceeded the maximum weekly benefit rate of $504 until December 31, 2023 — consistent with the Department of Labor's initial determination. Therefore, substantial evidence supports the Board's finding that claimant was ineligible for benefits during the dismissal period (see Labor Law § 591 [6] [former (a)], [b], [c]); compare Matter of Hernandez [Lieblich & Co.-Roberts], 97 AD2d 585, 586 [3d Dept 1983], affd 63 NY2d 737 [1984]).

With respect to the recoverable overpayment of benefits, "the provisions of Labor Law § 597 (4) permit the recovery of benefits paid when a claimant makes a false statement or representation, even if the misrepresentation is unintentional" (Matter of Holst [Commissioner of Labor], 247 AD3d 1453, 1454 [3d Dept 2026]; see Matter of Nottage [Commissioner of Labor], 234 AD3d 1163, 1165 [3d Dept 2025]). Claimant testified that he first applied for benefits on July [*3]5, 2023, and indicated on his application that he would receive neither payments after the effective date nor any lump sum dismissal pay. As claimant did receive a lump sum payment after the effective date and was accordingly ineligible for benefits, "the unemployment insurance benefits paid to claimant are recoverable based upon the false statements" (Matter of Nottage [Commissioner of Labor], 234 AD3d at 1165 [internal quotation marks, brackets and citation omitted]; see Matter of Spring [Syracuse City Sch. Dist.-Commissioner of Labor], 215 AD3d 1211, 1212 [3d Dept 2023]).

"As to the penalties imposed, whether a claimant has made a willful misrepresentation to obtain benefits is a factual issue for the Board to resolve and will be upheld if supported by substantial evidence" (Matter of Korotkaya [Commissioner of Labor], 248 AD3d 1481, 1482 [3d Dept 2026] [internal quotation marks and citations omitted]). Despite claimant's purported belief that the payment did not constitute severance, he did not attempt to contact the Department seeking guidance regarding the certification with respect to the timing of his receipt of the payment (see Matter of Falus [Commissioner of Labor], 276 AD2d 1009, 1010 [3d Dept 2000]; Matter of Scott [New York Law School-Commissioner of Labor], 257 AD2d 871, 871-872 [3d Dept 1999], lv denied 93 NY2d 808 [1999]; compare Matter of Nottage [Commissioner of Labor], 234

AD3d at 1166). Moreover, "[t]he Board, as the sole arbiter of credibility, was also entitled to reject claimant's exculpatory testimony" (Matter of Sharma [Commissioner of Labor], 245 AD3d at 1088; see Matter of Stoddard [Farm Family Cas. Ins. Co. Corp.-Commissioner of Labor], 228 AD3d 1198, 1200 [3d Dept 2024]). In light of the foregoing, the Board's determination that claimant made willful misrepresentations to obtain benefits is supported by substantial evidence and its imposition of monetary and forfeiture penalties will not be disturbed (see Matter of Dai Kwang Lim [Supreme Home Care Agency of NY Inc.-Commissioner of Labor], 246 AD3d 1177, 1180 [3d Dept 2026]; Matter of Spring [Syracuse City Sch. Dist.-Commissioner of Labor], 215 AD3d at 1212; Matter of Barbera [Commissioner of Labor], 28 AD3d 973, 975 [3d Dept 2006]).

We have reviewed claimant's remaining contentions, including that the benefits he received for 26 weeks should be applied to an alleged future period of eligibility, and find them to be without merit.

Ceresia, Powers, Corcoran and Ryba, JJ., concur.

ORDERED that the decision is affirmed, without costs.