

Matter of Roy (Commissioner of Labor), 138 A.D.3d 1284 (2016)

28 N.Y.S.3d 353, Unempl.Ins.Rep. (CCH) P 12,849, 2016 N.Y. Slip Op. 02885



138 A.D.3d 1284, 28 N.Y.S.3d 353 (Mem), Unempl.Ins.Rep. (CCH) P 12,849, 2016 N.Y. Slip Op. 02885

**\*\*1** In the Matter of the Claim of Shawn Roy, Appellant. Commissioner of Labor, Respondent.

Supreme Court, Appellate Division, Third Department, New York

521321

April 14, 2016

CITE TITLE AS: Matter of Roy (Commissioner of Labor)

### HEADNOTE

Unemployment Insurance

Benefits

Disqualification—Termination Due to Misconduct

Shawn Roy, Albany, appellant pro se.

Appeal from a decision of the Unemployment Insurance Appeal Board, filed September 24, 2014, which ruled that claimant was disqualified from receiving unemployment insurance benefits because his employment was terminated due to misconduct.

Substantial evidence supports the Unemployment Insurance Board's determination that claimant was discharged from his position as a food service worker in a nursing home due to disqualifying misconduct. Claimant was obligated “even during his off-duty hours, to honor the standards of behavior which his employer has a right to expect of him and . . . he may be denied unemployment benefits as a result of misconduct in connection with his work if he fails to live up to this obligation” (*Matter of Markowitz* [New York City Human Resources Admin.—Roberts], 94 AD2d 155, 156 [1983]; see *Matter of Punter* [Ross], 43 NY2d 743, 744 [1977]; *Matter of Moniz* [Nucor Steel Auburn, Inc.—Commissioner of Labor], 126 AD3d 1251, 1252 [2015]). Here, the record contains evidence that claimant created violent and sexually explicit videos using “LEGO” characters, including characters depicting the executive director of the nursing home, claimant's department head and two female coworkers, and posted the videos online. Although claimant testified that he was depicting celebrities and fictional characters in his movies, and not his coworkers, this presented a credibility issue for the Board to resolve (see *Matter of Manieson* [Commissioner of Labor], 119 AD3d 1312, 1313 [2014]; *Matter of Portis* [Commissioner of Labor], 118 AD3d 1195, 1196 [2014]). Under these circumstances, we perceive no basis to disturb the Board's determination that claimant engaged in disqualifying misconduct. Claimant's remaining claims have been considered and found to be without merit.

McCarthy, J.P., Egan Jr., Lynch and Clark, JJ., concur. Ordered that the decision is affirmed, without costs. **\*1285**

Copr. (C) 2024, Secretary of State, State of New York