

STATE OF NEW YORK      DEPARTMENT OF LABOR

IN THE MATTER OF

Timothy (Tim) Burbee,

Appellant,

for a review of the determination by the Division of  
Employment and Workforce Solutions of the New York  
State Department of Labor dated July 17, 2012 terminating  
service for him at all offices of said Division.

**DECISION AND  
ORDER**

NOS-12-0002

A hearing was held in this matter on November 9, 2012, at Albany, New York, and via videoconference with Buffalo, New York, to adjudicate a determination issued by the Division of Employment and Workforce Solutions (“DEWS”) of the New York State Department of Labor (“Department”). By written determination dated July 17, 2012, DEWS terminated the right of Timothy Burbee (“Appellant”) to access services at all Division locations for a period of six months, and to only allow the Appellant to reapply for services after that period has run, and even then, to reserve the right to impose specific restrictions or requirements for reinstatement to ensure adequate protections are afforded its employees and customers at its centers. The Appellant’s suspension was based on his violent behavior evidenced by a telephone message left on an answering answering machine at the Niagara Falls One-Stop Center. The Appellant appeals from that determination.

**APPEARANCES**

Department Counsel, Pico Ben-Amotz (Kevin E. Jones, Senior Attorney, of Counsel), represented the Division. The Appellant appeared pro se.

**FINDINGS OF FACT**

The Appellant’s suspension was precipitated by an event that occurred on July 10, 2012. Appellant left a message on the voice mail of Department employee Stanley

Sikorski, a supervisor in the Department's Niagara Falls One-Stop office; Mr. Sikorski memorialized the event by preparing a Department document called an Unusual Incident Report (DOL 1). In his report, Mr. Sikorski related the substance of the telephone message from Respondent, the key aspect of which was the question "What's my resolution? Climb up on a rooftop with a high powered rifle?" (DOL 1).

Respondent testified that he had become extremely frustrated due to his inability to contact anyone in the Department to help him with his unemployment insurance claim (T. 24, 25). He admitted the language in his message included the question "What is a person suppose (sic) to do to get you to do your job. Pack a lunch and stay for three days or maybe climb a building with a high powered rifle." (T. 26). He characterized his call as a desperate request for someone to contact him, not a serious threat (T. 26).

Mr. Sikorski filed a report with the Niagara Falls Police Department concerning the telephone message. The officer who prepared the report stated that he listened to the voice mail message and that it identified the caller as Respondent, who said "I will be forced to climb to the roof with a high power rifle?" (DOL 2).

Department employee Russ Oliver oversees Department one-stop offices, including that in Niagara Falls (T. 7). Mr. Oliver determined that Respondent's message constituted a threat of violence or bodily harm as defined by Department policy and decided to terminate Respondent's access to the Department's offices for a period of six months (T. 18). On July 17, 2012, the Department sent a letter to the Respondent notifying him of the decision to ban him from its offices (DOL 4; T. 18).

## **CONCLUSIONS OF LAW**

Respondent does not contest that the Department's policy concerning the treatment of disruptive customers is found in the Disruptive Customer Policy Framework ("Policy") (DOL 5). The Policy defines violent behavior to include the suggestion of retribution or violence received by telephone (DOL 5). The Policy requires the suspension of an individual who engages in violent behavior from returning to any Department one-stop for no less than six months (DOL 5).

## **DISCUSSION**

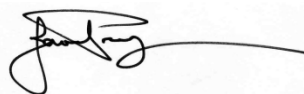
Respondent's own testimony confirms the substance of the message he left with the Department employee. While he may have meant no harm and spoken in the manner he did because of the deep frustration he felt in dealing with the Department, the language itself cannot be overlooked. Words have meaning and, sadly, in today's world a threat involving the use of a rifle, no matter how hyperbolic the speaker may have meant it to be, cannot be ignored. It is not the responsibility of Department staff to judge whether someone "really" means what he says when this kind of language is involved. Instead, staff are required to follow a clearly outlined policy, and in this case that is what happened. Respondent received the minimum suspension allowed, which, under the circumstances, was an appropriate response from the Department.

## **DECISION AND ORDER**

Appellant engaged in violent behavior within the definition of the Department's Policy; the written determination dated July 17, 2012, terminating the right of Appellant to access services at all Department one-stop locations for a period of six months, and to only allow the Appellant to reapply for services after that period has run, and to reserve the right to impose specific restrictions or requirements for reinstatement to ensure adequate protections are afforded its employees and customers at its centers, is sustained.

That time period having now run, Appellant is eligible to reapply for services.

Dated: February, 1, 2013  
Albany, New York



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Jerome A. Tracy, Hearing Officer  
Office of Administrative Adjudication  
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Albany NY 12240