State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: April 21, 2016 521428

In the Matter of the Claim of
FRANK C. SARSON,
Appellant.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,
Respondent.

Calendar Date: February 23, 2016

Before: Peters, P.J., McCarthy, Egan Jr. and Clark, JJ.

Frank C. Sarson, Albany, appellant pro se.

Eric T. Schneiderman, Attorney General, New York City (Bessie Bazile of counsel), for respondent.

Appeal from a decision of the Unemployment Insurance Appeal Board, filed August 8, 2014, which ruled, among other things, that claimant was disqualified from receiving unemployment insurance benefits because his employment was terminated due to misconduct.

Substantial evidence supports the decision of the Unemployment Insurance Appeal Board finding that claimant, a utility worker with a food service company, lost his employment due to misconduct (see Matter of Shafer [Commissioner of Labor], 107 AD3d 1280, 1280 [2013]). The record establishes that claimant was discharged from his employment following an investigation by the employer into complaints that he made racial slurs to a coworker, which was in violation of a known policy of the employer. "It is well settled that violating a known policy of an employer can constitute disqualifying misconduct . . ., as can offensive behavior in the workplace (Matter of Manno

[Commissioner of Labor], 8 AD3d 869, 869 [2004]; see Matter of Rivers [Federation Empl. & Guidance Serv.–Commissioner of Labor], 44 AD3d 1191, 1192 [2007]; Matter of Sarmiento [Newsday, Inc.–Commissioner of Labor, 287 AD2d 851, 852 [2001]). Although claimant denied making any racial remarks, this presented a credibility issue for the Board to resolve (see Matter of Mulea [Commissioner of Labor], 23 AD3d 753, 754 [2005]). Furthermore, given that claimant indicated on his application for unemployment insurance benefits that he was discharged due to lack of work, the Board's finding that claimant made a willful false statement to obtain benefits and its imposition of recoverable overpayments of benefits will not be disturbed (see Matter of Campon [Commissioner of Labor], 122 AD3d 1228, 1229 [2014]).

Peters, P.J., McCarthy, Egan Jr. and Clark, JJ., concur.

ORDERED that the decision is affirmed, without costs.

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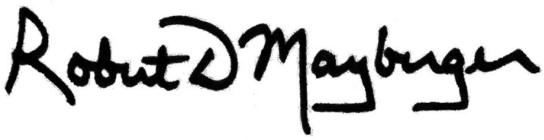

Robert D. Mayberger
Clerk of the Court