

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

Decided and Entered: September 17, 2009

505760

In the Matter of the Claim of
RICHARD M. KELLY,
Appellant.

Redacted

[REDACTED], INC.,
Respondent.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,
Respondent.

Calendar Date: August 3, 2009

Before: Cardona, P.J., Peters, Rose, Kane and Kavanagh, JJ.

Richard M. Kelly, New York City, appellant pro se.

Peter M. Agulnick, P.C., New York City (Peter M. Agulnick
of counsel), for **[REDACTED]**, Inc., respondent.

Redacted

Andrew M. Cuomo, Attorney General, New York City (Mary
Hughes of counsel), for Commissioner of Labor, respondent.

Appeal from a decision of the Unemployment Insurance Appeal
Board, filed July 30, 2008, which ruled that claimant was
disqualified from receiving unemployment insurance benefits
because he voluntarily left his employment without good cause.

Claimant worked as a client relationship manager for a
software development company from May 2006 until September 2007.
He initially entered into a contract with the company under which
he was to be paid on a commission basis with a \$4,000 monthly
draw. That arrangement was changed in November 2006 at which
time the monthly draw was eliminated after claimant was absent

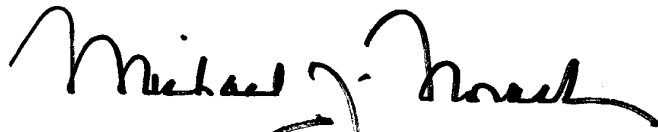
from work and nonresponsive to clients. Claimant continued to work for the company until receiving his last commission check on September 17, 2007. Dissatisfied with the amount of that check, he left his job. The Unemployment Insurance Appeal Board disqualified him from receiving unemployment insurance benefits on the basis that he voluntarily left his employment without good cause. Claimant now appeals.

We affirm. It is well settled that dissatisfaction with wages does not constitute good cause for leaving employment for purposes of receiving unemployment insurance benefits (see Matter of Strader [Commissioner of Labor], 49 AD3d 1120, 1120 [2008]; Matter of Feliciano [Commissioner of Labor], 39 AD3d 1115, 1116 [2007]). Likewise, the failure to take steps to protect one's employment by giving the employer an opportunity to remedy any problems will also result in disqualification (see Matter of Crawford [Commissioner of Labor], 54 AD3d 1120, 1121 [2008]; Matter of Warmsley [Commissioner of Labor], 32 AD3d 1059, 1060 [2006]). In the case at hand, claimant was clearly unhappy with his compensation as he filed a complaint with the Department of Labor asserting that he was being paid less than minimum wage. Although claimant maintained that he communicated his concerns to the employer prior to the time that he quit, the employer's representative stated that he did not recall such a conversation. Such conflicting testimony presented a credibility issue for the Board to resolve (see Matter of Soto-Harold [Commissioner of Labor], 55 AD3d 1119, 1120 [2008]). In view of this, and considering that claimant admitted to voluntarily leaving his job, substantial evidence supports the Board's decision.

Cardona, P.J., Peters, Rose, Kane and Kavanagh, JJ.,
concur.

ORDERED that the decision is affirmed, without costs.

ENTER:



Michael J. Novack
Clerk of the Court