

## [Matter of Stanton \(Town of Bethel—Commissioner of Labor\)](#)

Supreme Court of New York, Appellate Division, Third Department

May 14, 2015, Decided; May 14, 2015, Entered

519269

### Reporter

128 A.D.3d 1202 \*; 9 N.Y.S.3d 465 \*\*; 2015 N.Y. App. Div. LEXIS 4110 \*\*\*; 2015 NY Slip Op 04182 \*\*\*\*; Unemployment Ins. Rep. (CCH) P12,795

[\*\*\*\*1] In the Matter of the Claim of Scott R. Stanton, Appellant. Town of Bethel, Respondent; Commissioner of Labor, Respondent.

**Counsel:** [\*\*\*1] Scott R. Stanton, Mongaup Valley, appellant, Pro se.

Robert S. McEwan, New York City, for Town of Bethel, respondent.

Eric T. Schneiderman, Attorney General, New York City (Linda D. Joseph of counsel), for Commissioner of Labor, respondent.

**Judges:** Before: Lahtinen, J.P., Garry, Rose and Devine, JJ. Lahtinen, J.P., Garry, Rose and Devine, JJ., concur.

### Opinion

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[\*1202] [\*\*466] Appeal from a decision of the Unemployment Insurance Appeal Board, filed January 22, 2014, which ruled that claimant was disqualified from receiving unemployment insurance benefits because he voluntarily left his employment without good cause.

For over four years, claimant held a full-time position as a heavy equipment operator for a municipal highway department. One of the conditions of his employment was that he maintain a valid commercial driver's license (hereinafter CDL). Following a traffic stop, claimant refused to take a breathalyzer test and his CDL was automatically suspended as a result. Although there was some discussion about having claimant resume working for the highway department as a laborer on a part-time basis, this did not occur and claimant was unable to return to his job as a heavy equipment operator. His application [\*\*\*2] for unemployment insurance benefits was initially denied. Following a

hearing, however, an Administrative Law Judge [\*1203] ruled that claimant was allowed to receive benefits. The Unemployment Insurance Appeal Board subsequently reversed this decision and concluded that claimant was disqualified from receiving benefits because he provoked his discharge. Claimant now appeals.

We affirm. Claimants who have undertaken voluntary actions that have resulted in the forfeiture of their valid CDLs, a necessary condition of employment, have been held to have provoked their discharge thereby disqualifying them from receiving unemployment insurance benefits (see [Matter of Ramirez \[Commissioner of Labor\], 84 AD3d 1656, 1657, 922 NYS2d 882 \[2011\]](#); [Matter of Hawkins \[Commissioner of Labor\], 71 AD3d 1215, 894 NYS2d 780 \[2010\]](#); [Matter of Decker \[Commissioner of Labor\], 27 AD3d 821, 809 NYS2d 476 \[2006\]](#), appeal dismissed 7 NY3d 740, 853 NE2d 245, 819 NYS2d 874 [2006]; [\*\*\*\*2] [Matter of Killorin \[Sweeney\], 232 AD2d 696, 696-697, 648 NYS2d 182 \[1996\]](#)). This is precisely what occurred here. Notwithstanding claimant's suggestion to the contrary, the municipality was not obligated to offer him a part-time position as a laborer (see [Matter of Ramirez \[Commissioner of Labor\], 84 AD3d at 1657](#)). Therefore, we find no reason to disturb the Board's decision.

Lahtinen, J.P., Garry, Rose and Devine, JJ., concur.  
Ordered that the decision is affirmed, without costs.

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