

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1865-15T1

CALEDA L. WOODS,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR,
SDH EDUCATION EAST,
L.L.C. and ABLE MEDICAL
TRANSPORTATION, INC.,

Respondents.

Submitted April 27, 2017 - Decided June 23, 2017

Before Judges Lihotz and Hoffman.

On appeal from the Board of Review, Department
of Labor, Docket No. 33362.

Caleda L. Woods, appellant pro se.

Christopher S. Porrino, Attorney General,
attorney for respondent Board of Review
(Melissa Dutton Schaffer, Assistant Attorney
General, of counsel; Daniel Pierre, Deputy
Attorney General, on the brief).

Respondents SDH Education East, LLC, and Able
Medical Transportation, Inc., have not filed
briefs.

PER CURIAM

Appellant Caleda Woods appeals from the October 19, 2015 final decision of the Board of Review (the Board), which determined appellant was liable for the repayment of \$21,041 in unemployment compensation received during a period she was not eligible for benefits because she misrepresented her employment status. The Board also imposed fines and disqualified appellant from receiving unemployment benefits for one year. On appeal, appellant requests she generally be relieved of the obligation for repayment and specifically attacks certain amounts as unfounded. Following our review, we affirm.

In March of 2005, appellant lost her job with Capitol Healthcare Systems, Inc. At that time, she applied for and was awarded unemployment benefits, which began in July 2005. Over the next five and one half years, appellant worked at various times for different employers, but failed to disclose, or under reported, these earnings to the Division of Unemployment and Temporary Disability Insurance (the Division) when renewing her request for unemployment benefits.

During the administrative hearing, the Division produced records from five unemployment benefit claims appellant submitted beginning May 5, 2005, until December 4, 2005. The Division periodically cross-references wages reported against employer

quarterly payroll reports. Generally, appellant accurately reported wages she received once, falsely reported she received no wages for sixteen weeks, and underreported wages she received over more than one-hundred weeks.¹

More specifically, in September of 2005, appellant was hired by SDH Education East, LLC, where she worked until 2007. However, she did not reveal her wages; instead, she notified the Division she received "\$0.00" each week. She next worked for the College of New Jersey for nine months in 2007, and left in October of 2008, when hired by Able Medical Transportation. During this period, despite earning ranging from \$150 to as much as \$491 per week, appellant inaccurately disclosed her weekly earnings, frequently asserting she received \$30 or \$40.

On April 27, 2010, the Division discovered the discrepancy between appellant's weekly report of wages and amounts she was

¹ During the agency hearing, Division Representative Thomas Gardner explained the manner appellant submitted her reports to the Division. To receive unemployment compensation, a claimant must telephonically report his or her employment status and earnings on a weekly basis. The reports are received through an automated system, which prompts a claimant to verify whether they worked and if so, to state the amount of wages received during the prior week. The figure, "\$0.00," is entered automatically, only if a claimant reports no employment. Gardner explained, if a claimant reports she was employed in a previous week, she must enter a positive numerical value representing her wages because the system will not allow a claimant to report wages received as zero, if employed.

actually paid, as reported by her employers. After an audit of the five unemployment claims appellant filed, the Division concluded appellant misrepresented her wages. On October 13, 2011, the Division issued a demand for repayment of the unemployment benefits overpaid to appellant, imposed fines, and a one-year disqualification period barring her from receiving unemployment benefits, ending October 13, 2011.

An Appeal Tribunal considered appellant's challenges to the Division's determination, during a two-day telephonic hearing.² Appellant admitted she did not always accurately report her income, explaining she was working part-time and "in a struggle," as the single mother of six children, who was trying to pay bills and meet her living expenses. However, she challenged the Division's records, in part, asserting she only underreported earnings received from Able Medical, and was fired from that position in April 2010, when her driver's license was suspended after an accident. The Division's representative, Thomas Gardner, explained the records obtained were from appellant's employer and the audit results.

The Division's conclusion was affirmed by the Appeal Tribunal. Appellant sought review by the Board, which adopted the

² The hearing commenced on October 20, 2014 and continued on January 8, 2015.

findings of fact developed by the Appeals Tribunal. After noting corrections to overpayments in specific weeks, along with a concomitant reduction in issued fines, the Board concluded appellant must repay improperly paid benefits totaling \$21,041, fines and penalties of \$6,020.75, and imposed the one-year bar on collection of future benefits.³

On appeal, appellant argues because she worked part-time she would qualify for partial unemployment benefits, therefore she asserts the calculated overpayments should be reduced by the amount of her entitled partial benefits. Additionally, although acknowledging she understands her error and views this as a "learning experience," she emphasizes her difficult financial situation and responsibility to her six children, presumably requesting overpayments and penalties be waived pursuant to N.J.A.C. 12:17-14.2(a). Finally, she reasserts the Division's

³ The Division determined appellant received the following overpayments: (1) \$1,204 for the weeks ending in May 14, 2005 through May 28, 2005 and June 11, 2005 through July 2, 2005; (2) \$1,014 for the weeks ending in September 2, 2006 through October 7, 2006; (3) \$6,074 for the weeks ending in October 4, 2008 through October 18, 2008, November 1, 2008 through January 17, 2009, February 28, 2009 through April 25, 2009 and February 13, 2010 through April 17, 2010; (4) \$7,297 for the weeks ending in May 2, 2009 through February 6, 2010; and (5) \$5,452 for the weeks ending in May 1, 2010 through December 4, 2010, for a total amount of \$21,041.

totals are inaccurate because she was unemployed between May and December 2010.

Our review of administrative agency decisions is limited. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). "[I]n reviewing the factual findings made in an unemployment compensation proceeding, the test is not whether [we] would come to the same conclusion if the original determination was [ours] to make, but rather whether the factfinder could reasonably so conclude upon the proofs." Ibid. "If the Board's factual findings are supported 'by sufficient credible evidence, [we] are obliged to accept them.'" Ibid. (quoting Self v. Bd. of Review, 91 N.J. 453, 459 (1982)). We also give due regard to an agency's credibility determinations. Logan v. Bd. of Review, 299 N.J. Super. 346, 348 (App. Div. 1997). Reversal is warranted only when we conclude the agency's action was arbitrary, capricious, or unreasonable. Brady, supra, 152 N.J. at 210.

In enacting the Unemployment Compensation Law, the Legislature purposefully "require[d] the full repayment of unemployment benefits received by an individual who, for any reason, regardless of good faith, was not entitled to those benefits." Bannan v. Bd. of Review, 299 N.J. Super. 671, 674 (App. Div. 1997). The Division's efforts to seek refund of

unemployment benefits inappropriately paid is authorized by

N.J.S.A. 43:21-16(d), which provides in pertinent part:

When it is determined . . . that any person, whether (i) by reason of the nondisclosure or misrepresentation by him or by another of a material fact (whether or not such nondisclosure or misrepresentation was known or fraudulent), or (ii) for any other reason, has received any sum as benefits under this chapter . . . while any conditions for the receipt of benefits imposed by this chapter . . . were not fulfilled in his case, or while he was disqualified from receiving benefits, or while otherwise not entitled to receive such sum as benefits, such person, unless the director (with the concurrence of the controller) directs otherwise by regulation, shall be liable to repay those benefits in full.

Appellant asks the amount of repayment be reduced because she was working part-time and caring for her family. This argument has been reviewed and rejected by the New Jersey Supreme Court in Malady v. Bd. of Review, 76 N.J. 527 (1978). The Court faced similar facts and held although the claimant might have been eligible for partial unemployment benefits, pursuant to N.J.S.A. 43:21-3(b), had he truthfully and accurately reported his earnings; the claimant remained liable to refund the full amount of benefits received because the plain language of N.J.S.A. 43:21-16(d) provides a claimant can be made obligated to pay the "amount so received." Id. at 531.

Thus, we believe that subsection [N.J.S.A. 43:21-16](d), which is found in a provision entitled "Penalties", is intended by the Legislature to give the director the discretion to impose an additional penalty where the claimant purposely fails to make an accurate or truthful report of his income. That the other subsections of N.J.S.A. 43:21-16 also provide separately for some penalty, rather than indicating the contrary, is in fact strong evidence of subsection (d)'s own "penalty" potential.

[Ibid.]

The Court affirmed this court's opinion, which emphasized "[t]he statutory provisions . . . make it clear that an unemployed individual is eligible to receive benefits for any week only if he [or she] has satisfied the reporting requirements prescribed by the Division, one of which is that he accurately report all wages earned during the period involved." Malady v. Bd. of Review, 159 N.J. Super. 530, 532 (App. Div. 1977), aff'd in part, rev'd and remanded on other grounds, 76 N.J. at 531.

We construe appellant's arguments also to suggest repayment should be waived. The Director may waive the recovery of benefits under limited circumstances, which include (1) "[w]here the claimant is deceased;" (2) "[w]here the claimant is disabled and no longer able to work;" and (3) when recovery "would be patently contrary to the principles of equity." N.J.A.C. 12:17-14.2(a)(1), (2), (3). However, any grant of waiver is initially circumscribed

by a condition that claimant has not "misrepresented or withheld any material fact in obtaining benefits." N.J.A.C. 12:17-14.2(b); see also Mullarney v. Bd. of Review, 343 N.J. Super. 401, 409 (App. Div. 2001). This is a prerequisite appellant is unlikely to satisfy.

Here, a formal request for waiver has not been presented by appellant for the Director's review, despite the Director's exclusive authority in this area. N.J.S.A. 43:21-16(d)(1); N.J.A.C. 12:17-14.2(a); see also Howard v. Bd. of Review, 173 N.J. Super. 196, 202 (App. Div. 1980). Absent exhaustion of available administrative relief, this court may not act. See R. 2:2-3(a)(2) (stating an appellate court cannot review an agency decision until it has become final).

Finally, appellant's factual challenges to the periods of earnings or the amount of wages underreported is not supported and belied by the Division's documentation. We conclude the argument lacks merit. R. 2:11-3(e)(1)(E).

The Legislature has clearly stated its intent for overpaid unemployment benefits to be repaid in full. N.J.S.A. 43:21-16(d)(1).⁴ In this matter, the Board's decision aligns with its

⁴ Importantly, 42 U.S.C.A. § 503(a)(9) requires states to recoup unemployment funds erroneously distributed, as a necessity to maintain the proper and efficient administration of the

duty "to preserve the [unemployment insurance trust] fund against claims by those not intended to share in its benefits," and it is in fulfillment of that duty reimbursement must be ordered. Brady, supra, 152 N.J. at 212 (quoting Yardville Supply Co. v. Bd. of Review, 114 N.J. 371, 374 (1989)). "The Board of Review is charged with the responsibility to serve not only the interest of the individual unemployed, but also the interests of the general public." Bannan, supra, 299 N.J. Super. at 674.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

unemployment compensation laws. Bannan, supra, 299 N.J. Super.
at 675.