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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-0053-16T4

EDWARD T. CASSIDY, JR.,

Appellant,

v.

BOARD OF REVIEW, DEPARTMENT
OF LABOR AND WORKFORCE
DEVELOPMENT; LABOR READY;
and ACOSTA, INC.,

Respondents.

Submitted January 10, 2018 – Decided February 8, 2018

Before Judges Nugent and Geiger.

On appeal from the Board of Review, Department
of Labor and Workforce Development, Docket No.
049,395.

Edward T. Cassidy, Jr., appellant pro se.

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

Respondents Labor Ready and Acosta, Inc. have
not filed a brief.

PER CURIAM

Appellant Edward T. Cassidy, Jr. appeals from a final agency decision of the Board of Review dated June 30, 2016. The Board modified the Appeal Tribunal's determination, holding Cassidy liable to refund unemployment benefits in the amount of \$3971 paid for the weeks ending January 11, 2014, through June 28, 2014, pursuant to N.J.S.A. 43:21-16(d). We affirm.

Between January 11, 2014, and June 28, 2014, Cassidy was employed part-time by respondent Acosta, Inc. Cassidy filed a claim for unemployment benefits on December 29, 2013, and received unemployment benefits for the weeks ending January 11, 2014, through June 28, 2014. Upon discovering the benefits were paid in error, the Director of the Division of Unemployment and Disability Insurance Services issued a February 12, 2015 determination disqualifying Cassidy from receiving benefits for one year commencing February 11, 2015. This determination was based on the conclusion that Cassidy had received the benefits through false or fraudulent misrepresentation. In addition, the Director held Cassidy liable for a refund of the \$4175 he received as benefits for the weeks ending January 11, 2014, through June 28, 2014, and imposed a fine of \$1043.75 for fraudulently receiving benefits.

On February 17, 2015, Cassidy appealed to the Appeal Tribunal. In a March 18, 2015 decision, the Appeal Tribunal remanded the matter for possible redetermination.

On remand, Cassidy participated in a telephonic hearing on July 27, 2015. During the hearing, Cassidy admitted filing for unemployment benefits for the period in question. He further admitted making mistakes while claiming benefits for that period. Cassidy had reported earnings of only \$23 per week during that period despite actually working twenty-one hours per week, earning \$11.50 per hour or \$241.50 per week, more than ten-times higher than he reported. The hearing examiner requested Cassidy provide documentation from his physician regarding his alleged brain injury and from his aunt regarding her assistance in filing for the unemployment benefits in question. The additional documentation would then be considered at a subsequent hearing.

On September 23, 2015, the Appeal Tribunal dismissed the appeal without prejudice as a result of Cassidy's inability to participate in a scheduled hearing. The dismissal was reopened, and Cassidy participated in a further hearing on March 21, 2016, during which the documentation from Cassidy's physician along with a statement provided by Cassidy's aunt were reviewed. In a March 24, 2016 decision, the Appeal Tribunal held Cassidy liable to refund the \$4010 in benefits received for the weeks ending January

11, 2014 through June 28, 2014. The Appeal Tribunal also held Cassidy was not subject to a fine, but he was disqualified from unemployment benefits for the period in question, pursuant to N.J.S.A. 43:21-5(g) and N.J.S.A. 43:21-16(d).

On April 11, 2016, Cassidy appealed the Tribunal's decision to the Board of Review. On June 30, 2016, the Board of Review issued a final decision, modifying the decision of the Appeal Tribunal, holding Cassidy liable to refund \$3971, rather than \$4010, pursuant to N.J.S.A. 43:21-16(d). This appeal followed.

On appeal, Cassidy raises the following point for our consideration:

THE DEPARTMENT OF LABOR (RESPONDENT) FAILED TO OPEN A CASE FILE AGAINST LABOR READY (FORMER EMPLOYER). THE DEPARTMENT OF LABOR'S (RESPONDENT) INVESTIGATOR WAS HAVING PERSONAL ISSUES AND COULD NOT PERFORM THE DUTIES OF HER JOB. THE DEPARTMENT OF LABOR (RESPONDENT) KNOWINGLY AND INTENTIONALLY LIED WHEN THEY STATED THAT THEY DID NOT KNOW WHERE LABOR READY (FORMER EMPLOYER) WAS AND THAT THEY COULD NOT LOCATE LABOR READY (FORMER EMPLOYER). THE ACTIONS OF THE DEPARTMENT OF LABOR (RESPONDENT) CAUSED INJURIES TO EDWARD T. CASSIDY[,] JR[.'S] (CLAIMANT) LIFE.

For the first time on appeal, Cassidy raises an unrelated civil claim, seeking \$400,000 in unspecified damages from the Department of Labor for alleged unpaid wages relating to his former employment by Labor Ready in May 2012.

We exercise limited review of administrative agency decisions. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). We simply determine whether the administrative decision is arbitrary, capricious, or unreasonable. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980). The burden of proof rests with the person challenging the action. In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006). An individual seeking unemployment benefits bears the burden of proving that he or she is entitled to receive them. Brady, 152 N.J. at 218; Bonilla v. Bd. of Review, 337 N.J. Super. 612, 615 (App. Div. 2001).

In matters involving unemployment benefits, we accord deference to the expertise of the Board of Review. See Brady, 152 N.J. at 210; Doering v. Bd. of Review, 203 N.J. Super. 241, 245 (App. Div. 1985). We must accept the Board of Review's findings if they are supported by sufficient credible evidence. Brady, 152 N.J. at 210.

Unemployment compensation exists "to provide some income for the worker earning nothing because he is out of work through no fault or act of his own." Futterman v. Bd. of Review, 421 N.J. Super. 281, 288 (App. Div. 2011) (emphasis omitted) (quoting Brady, 152 N.J. at 212).

The Board of Review determined Cassidy was ineligible for unemployment benefits under N.J.S.A. 43:21-5(g) and liable to

refund benefits totaling \$3971 for the weeks ending January 11, 2014 through June 28, 2014, pursuant to N.J.S.A. 43:21-16(d). Cassidy grossly underreported his income, claiming he earned only \$23 per week while actually earning \$241.50 per week during that period. "N.J.S.A. 43:21-16(d) requires the full repayment of unemployment benefits received by an individual who, for any reason, regardless of good faith, was not actually entitled to those benefits." Bannan v. Bd. of Review, 299 N.J. Super. 671, 674 (App. Div. 1997) (citing Fischer v. Bd. of Review, 123 N.J. Super. 263, 266 (App. Div. 1973) (holding that claimant was required to refund erroneously paid unemployment benefits even when applied for in good faith)).

We are satisfied from our review of the record that the undisputed facts support the Board of Review's determination that Cassidy was not entitled to the benefits totaling \$3971 he received for the weeks ending January 11, 2014, through June 28, 2014. He concedes he received those benefits improperly and is responsible for repaying that amount. Accordingly, the decision of the Board of Review was not arbitrary, capricious, or unreasonable and is supported by substantial credible evidence in the record.

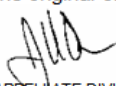
Cassidy's unrelated claim against the Department of Labor, which he raises for the first time on appeal, falls entirely outside the scope of this appeal. "An appellate court ordinarily

will not consider issues that were not presented to the trial court." State v. Arthur, 184 N.J. 307, 327 (2005) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)); accord Johnson v. Roselle EZ Quick LLC, 226 N.J. 370, 396 (2016) (declining to address an issue not raised before the trial court that was not an issue of sufficient public concern). We decline to consider a claim not raised before the Board of Review that presents issues which are not germane to this appeal.

The remaining contentions raised by Cassidy lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D) and (E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION