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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-0167-16T3

PATRICIA MAHER,

Appellant,

v.

BOARD OF REVIEW, DEPARTMENT  
OF LABOR AND WORKFORCE  
DEVELOPMENT, and HACKENSACK  
UNIVERSITY MEDICAL CENTER,

Respondents.

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Submitted January 16, 2018 – Decided February 2, 2018

Before Judges Ostrer and Whipple.

On appeal from the Board of Review, Department  
of Labor and Workforce Development, Docket No.  
089,382.

Law Offices of Charles Shaw, PC, attorneys for  
appellant (Karilyn M. Ward, on the briefs).

Gurbir S. Grewal, Attorney General, attorney  
for respondent Board of Review (Jason W.  
Rockwell, Assistant Attorney General, of  
counsel; Adam K. Phelps, Deputy Attorney  
General, on the brief).

Respondent Hackensack University Medical  
Center has not filed a brief.

PER CURIAM

Patricia Maher appeals from the Board of Review's decision finding her ineligible to receive unemployment benefits for the weeks ending January 16, 2016, through April 2, 2016, and requiring her to refund the \$7752 in benefits she received for that period. The Board adopted the reasoning of the Appeal Tribunal. We affirm.

Maher testified before the Appeal Tribunal that Hackensack University Medical Center terminated her employment as a registered nurse in August 2015. She began receiving unemployment benefits soon thereafter. After unsuccessfully searching for another nursing position, she decided to change careers. In November 2015, she earned a real estate license, and, on January 12, 2016, she began working as a real estate agent for a licensed broker. She stated she was an independent contractor and relied solely on commissions for compensation.

However, Maher testified she had earned no commissions as of the June 2016 hearing, although she worked "full-time hours." She participated in training, trailed other agents, reviewed the multiple listing service and tried to secure clients. She admitted that she had not searched or applied for any other job since September 2015, when she was still looking for a nursing position. Her nursing license was deactivated a few months later.

As the Board adopted the Tribunal's decision as its own without elaboration, we focus on the Tribunal's reasoning. The

Tribunal found that Maher was ineligible for unemployment benefits beginning with the January 16, 2016 week because she was no longer available for work, or actively seeking work. The Tribunal relied on N.J.S.A. 43:21-4(c)(1), which states that an individual is eligible for benefits "only if . . . [t]he individual is able to work, and is available for work, and has demonstrated to be actively seeking work . . . ." As Maher "dedicate[d] full-time hours to her self-employment endeavor and has not sought any other work," she was not available for work. Relying on N.J.S.A. 43:21-16(d), the Tribunal found that Maher was responsible for refunding the benefits that were paid to her while she was not available for work.

On appeal, Maher contends the Board's decision was arbitrary, capricious, and unreasonable because she was available for work and actively seeking work. She also contends that she was eligible for benefits because she participated in real estate training. The first argument lacks support in the record. The second is based on a misreading of the statute.

We exercise limited review of the Board's decision. See Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). We will affirm the Board's decision if it is supported by substantial credible evidence, ibid., and, upon our de novo review, we discern no

mistakes of law, McClain v. Bd. of Review, 451 N.J. Super. 461, 467 (App. Div. 2017).

Maher's argument that she was available for work is simply unsupported by her testimony. She searched unsuccessfully for nursing jobs in September 2015 and stopping looking for any jobs after that. Instead, she embarked on her career as a real estate agent, which was a full-time endeavor beginning in January 2016. Thus, she was not available to work elsewhere, which is a requirement of benefit eligibility. N.J.S.A. 43:21-4(c)(1).

It is of no moment in this case that Maher received no compensation for her work during the period at issue. We are aware that in Borromeo v. Bd. of Review, 196 N.J. Super. 576, 582-83 (App. Div. 1984), we held that full-time work did not bar a claimant's entitlement to unemployment benefits. But, in that case, the claimant contended he was using his current job, where he earned virtually nothing, as a platform to find more appropriate work and that he was "free to leave [his job] at any time." Id. at 582. Maher made no comparable assertion. Rather, she testified she ceased looking for other employment, focusing instead on her real estate career.

Maher also misreads the statute that preserves eligibility for benefits if a person attends a training program. The law requires that the training program be approved by the Division,

and Maher presented no evidence that her real estate training program was so approved. See N.J.S.A. 43:21-4(c)(4)(A) (stating that a person "shall not be deemed unavailable for work or ineligible because the individual is attending a training program approved for the individual by the division to enhance the individual's employment opportunities") (emphasis added).

Finally, Maher contends that unemployment compensation should be available to support the income of a person like herself who has taken the initiative to start a new career, after a previous one had reached an end, but has yet to reap any benefits. She makes a policy argument, perhaps one with heightened resonance with the growth of the so-called "gig economy." Cf. Gil v. Clara Maas Med. Ctr., 450 N.J. Super. 368, 391-92 (App. Div. 2017) (discussing the changing nature of employment relationships in the "so-called 'gig economy'") (Ostrer, J., concurring). Increasing numbers of persons who are terminated from traditional employment may be constrained to resort to independent contracting, despite compensation that falls short of the unemployment benefits they would receive if they continued to engage in the futile search for a traditional job like the one they lost.


However, it is not our role to consider such policy arguments, however compelling they may be. In order to be eligible for benefits, an individual must be available for work and searching

for work, as we have discussed; and an individual must be "unemployed," which means an individual must earn less than the amount of his or her weekly benefit, and work less than full-time. See N.J.S.A. 43:21-19(m)(1)(A) (stating that "[a]n individual shall be deemed 'unemployed' for any week during which . . . [t]he individual is not engaged in full-time work and with respect to which his remuneration is less than his weekly benefit rate"). Outside of cases like Borromeo, the law disqualifies a person engaged in full-time employment, even if that full-time employment produces no income.

Finally, Maher presents no meritorious challenge to the Division's order that she refund the benefits she was ineligible to receive. See Bannan v. Bd. of Review, 299 N.J. Super. 671, 674-76 (App. Div. 1997); N.J.S.A. 43:21-16(d)(1).<sup>1</sup>

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION

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<sup>1</sup> We recognize that the agency is empowered to waive a refund demand when recovery of benefits "would be patently contrary to the principles of equity." N.J.A.C. 12:17-14.2(a)(3). The Division "shall consider whether the terms of a reasonable repayment schedule would result in economic hardship to the claimant." N.J.A.C. 12:17-14.2(d). However, the record does not reflect that Maher requested a refund waiver, which should be decided by the Division as a threshold matter. See Mullarney v. Bd. of Review, 343 N.J. Super. 401, 410 (App. Div. 2001).