SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0760-16T4

ZAHIRAH N. HEMINGWAY,

Appellant,

v.

BOARD OF REVIEW, DEPARTMENT OF LABOR and AJS SUPERMARKETS, LLC,

Respondents.

Submitted May 2, 2018 – Decided May 23, 2018

Before Judges Nugent and Geiger.

On appeal from the Board of Review, Department of Labor and Workforce Development, Docket No. 088,574.

Zahirah Hemingway, appellant pro se.

Gurbir S. Grewal, Attorney General, attorney for respondent Board of Review (Melissa H. Raksa, Assistant Attorney General, of counsel; Nicholas Logothetis, Deputy Attorney General, on the brief).

Respondent AJS Supermarkets, LLC, has not filed a brief.

PER CURIAM

Appellant Zahirah N. Hemingway appeals from a final agency decision of the Board of Review dated September 27, 2016. The Board of Review affirmed the Appeal Tribunal's determination denying Hemingway's application for unemployment benefits. We affirm.

Respondent AJS Supermarkets, LLC, (AJS) employed Hemingway as a part-time cashier beginning February 23, 2015. On March 6, 2016, Hemingway received a written notice that she was suspended indefinitely, pending termination, because her cash register was short $9.58 the previous day, which was considered excessive. A shop steward was present when Hemingway received the notice.

Under their union contract, AJS employees can be suspended indefinitely but not for a fixed period of time. Following suspension, the employee may contact the union to set up a meeting to grieve the suspension. The union representative then contacts an AJS representative to schedule the meeting.

Hemingway was familiar with this grievance process, having previously grieved three disciplinary actions while employed by AJS. Despite her familiarity with the grievance process, neither Hemingway nor the union contacted AJS to schedule a meeting to grieve the disciplinary action. As a result, AJS assumed Hemingway was no longer interested in working for them.

On March 13, 2016, Hemingway filed for unemployment benefits. In an April 25, 2016 decision, the Deputy Director of the Division of Unemployment and Disability Insurance (the Division) found Hemingway was entitled to unemployment benefits commencing March 13, 2016.

AJS appealed to the Appeal Tribunal, which held a hearing on July 13, 2016. During the hearing, Hemingway argued AJS had terminated her employment and she had attempted to grieve the termination by calling the union, but the representative told her there was nothing the union could do for her because she was on "final correct[ive]." Rather than advising the union she wanted to formally grieve the disciplinary action, Hemingway "just accepted it."

Under AJS's disciplinary policy, an employee can face termination if he or she commits an additional violation or repeated violations. If the "employee grieves [the violation] and the union feels [the violation is] not severe enough, then [the employee] may go back on non-final corrective."

In a July 19, 2016 decision, the Appeal Tribunal noted Hemingway "had previously received in excess of six written warnings for similar infractions, including an indefinite suspension." The Appeal Tribunal found Hemingway was aware of the process for disputing the indefinite suspension, having done so

previously on multiple prior occasions. The Appeal Tribunal concluded:

> Following the suspension on [March 6, 2016], the claimant and her union representation declined to grieve the suspension, and the claimant was considered to have been separated from employment after failing to attempt to return from that indefinite suspension. Had the claimant attempted to return to work by grieving the suspension, the claimant may have returned to work . . . .

The Appeal Tribunal further found the March 6, 2016 indefinite suspension was not a discharge and Hemingway was "obligated to initiate her return to work" but declined to do so "[a]fter meeting resistance from her union representation, due to the volume of the claimant's infractions during the time with [AJS]." The Appeal Tribunal rejected Hemingway's contentions, determining, "[i]n failing to grieve the indefinite suspension, the claimant in effect severed her employment with [AJS]" and had "left work voluntarily without good cause attributable to the work."

The Appeal Tribunal reversed the Deputy Director's determination and found Hemingway was disqualified for benefits under N.J.S.A. 43:21-5(a) as of March 6, 2016. The Appeal Tribunal remanded the issue of potential liability for a refund of benefits to the Deputy Director for an initial determination.

Hemingway appealed to the Board of Review. On September 27, 2016, the Board affirmed the decision of the Appeal Tribunal but

corrected the separating employer from Staff Management Group, LLC to AJS. This appeal followed.

On appeal, Hemingway argues her March 6, 2016 indefinite suspension amounted to a discharge. She further argues, had the Deputy Director followed proper protocol, she would not have been initially approved for unemployment benefits and would not be obligated to reimburse the unemployment benefits she received.

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 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. We must accept the Board of Review's findings if they are supported by sufficient credible evidence. Ibid.

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). An individual is disqualified from unemployment benefits "[f]or the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works eight weeks in employment." N.J.S.A. 43:21-5(a).

An employee who has left work voluntarily has the burden of proving she did so with good cause attributable to the work. Brady, 152 N.J. at 218; Domenico v. Bd. of Review, 192 N.J. Super. 284, 287-88 (App. Div. 1983). "[I]t is the employee's responsibility to do what is necessary and reasonable in order to remain employed." Domenico, 192 N.J. Super. at 288 (citing Condo v. Bd. of Review, 158 N.J. Super. 172, 175 (App. Div. 1978)). "Evidence of a claimant's failure to seek redress of his grievances before quitting, including failure to press his right to pursue a grievance procedure, is certainly relevant and probative on the bona fides of his claim." Stonco Electr. Prods. Co. v. Bd. of Review, 106 N.J. Super. 6, 10 (App. Div. 1969).

Applying these principles, we affirm substantially for the reasons expressed by the Appeal Tribunal in its written decision. We add the following comments.

The decision of the Board of Review was not arbitrary, capricious, or unreasonable and is amply supported by substantial, credible evidence in the record. After receiving the notice of indefinite suspension, Hemingway did not contact AJS to grieve her suspension. Considering her disciplinary and grievance history with AJS, Hemingway should not have viewed the March 6, 2016 suspension notice as a discharge. By failing to grieve the indefinite suspension, Hemingway did not do what is necessary and reasonable in order to remain employed. She did not demonstrate she left work with good cause attributable to the work.

Hemingway's remaining argument is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.