SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0799-16T2

SHARON M. RYKOLA,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR,
and SOURCE4TEACHERS,

Respondents.

Submitted January 22, 2018 – Decided February 16, 2018

Before Judges Messano and O'Connor.

On appeal from the Board of Review, Department of Labor, Docket No. 096,157.

Sharon M. Rykola, appellant pro se.

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

Respondent Source4Teachers has not filed a brief.

PER CURIAM

Appellant Sharon M. Rykola appeals from the final decision of the Board of Review, which affirmed the Appeal Tribunal's decision finding her ineligible to receive unemployment compensation benefits due to committing acts of simple misconduct connected to the work. The Appeal Tribunal had reversed the decision of the Deputy Director (Deputy) of the Division of Unemployment and Disability Insurance, which found appellant eligible for unemployment compensation benefits. We affirm.

In April 2011, appellant was employed by Source4Teachers (employer) as a certified substitute teacher. The employer is an agency that provides substitute teachers to schools. On December 8, 2015, appellant was terminated for simple misconduct. Appellant applied for and the Deputy found her eligible for unemployment benefits, without disqualification. The Deputy determined there was insufficient evidence of misconduct.

The employer appealed the Deputy's determination. The Appeal Tribunal forwarded a written notice to appellant and the employer advising a telephone hearing was scheduled for August 29, 2016. The notice advised the parties of the time of day and the telephone number each was to call in order to participate in the hearing. On August 17, 2016, appellant sent a letter to the Appeal Tribunal in which she acknowledged receiving this notice.

Appellant did not call the Appeal Tribunal at the appointed time and, thus, did not participate in the hearing. A representative from the employer appeared and testified. The salient testimony was that, in October 2015, the employer received a report appellant allowed the students to play music in and wander out of the classroom and did not take any corrective action. In November 2015, appellant was reading a book to the students in an elementary school class when two male students pulled down a female student's pants and "hump[ed]" her. Although in charge of the classroom, appellant was unaware of the incident.

The following day, a student reported she asked appellant for some paper. When appellant ignored her request, the student again asked for paper. Appellant responded by stating she would choke the student if she repeated her request. Because of these three incidents, the employer sent appellant a notice advising she was terminated.

Following the hearing, the Appeal Tribunal reversed the Deputy, finding appellant was disqualified for benefits for the period November 15, 2015, through January 9, 2016, because she had committed acts of simple misconduct in violation of N.J.S.A. 43:21-5. The Appeal Tribunal found appellant's threat to choke the student and her failure to monitor classroom behavior

demonstrated "a disregard of the standards of behavior that the employer had the right to expect of a certified substitute teacher. The [appellant's] actions showed a disregard of the employer's interest and of the employee's obligations to the employer." The Appeal Tribunal remanded the question of whether appellant was required to refund any benefits she had received. The Board of Review affirmed the Appeal Tribunal.

On appeal, appellant contends she did not receive notice of the telephonic hearing and, thus, was deprived of the opportunity to testify and refute she threatened to choke a student. She also argues she should not have to refund the benefits she did receive. She does not specifically address the other allegations of misconduct, or contest that if any of the allegations were true, they would constitute simple misconduct.

The scope of our review of an agency's final decision is limited. See In re Stallworth, 208 N.J. 182, 194 (2011). We will not disturb an agency's ruling unless it is arbitrary, capricious, or unreasonable. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). When we "review[] 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.

(quoting Charatan v. Bd. of Review, 200 N.J. Super. 74, 79 (App. Div. 1985)).

We readily dispose of the very limited issues before us. First, appellant's contention she did not receive notice of the telephone hearing is resoundingly refuted by her August 17, 2016 letter to the Appeal Tribunal acknowledging she did receive notice of the hearing. Second, we decline to address the issue whether appellant is required to refund the benefits she received, because neither the Appeal Tribunal nor the Board of Review decided this question. See Duddy v. Gov't Emps. Ins. Co., 421 N.J. Super. 214, 221 (App. Div. 2011) (noting appellate court need not consider a question not decided by the trial court in the first instance).

Affirmed.