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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2001-16T4

JOY EBUZOR-ONAYEMI,

Appellant,

v.

BOARD OF REVIEW, DEPARTMENT OF
LABOR AND WORKFORCE DEVELOPMENT,
CARINGHOUSE PROJECTS, AW HOLDINGS,
and SUSSEX COUNTY ARC,

Respondents.

Submitted January 25, 2018 – Decided February 14, 2018

Before Judges Simonelli and Haas.

On appeal from the Board of Review, Department
of Labor and Workforce Development, Docket No.
099,758.

Onyejekwe & Associates, LLP, attorneys for
appellant (Sylvia I. Onyejekwe, on the
briefs).

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

Respondents Caringhouse Projects, AW Holdings, and Sussex County ARC, have not filed briefs.

PER CURIAM

Appellant Joy Ebuzor-Onayemi appeals from the December 5, 2016 decision of the Board of Review (Board) finding that she was not entitled to extended unemployment benefits during training (ABT). For the reasons that follow, we reverse.

The relevant facts are not in dispute. Appellant worked for three different employers as a direct care aide. She was employed by Caringhouse Projects from March 2011 until she was laid off on March 30, 2014; by AW Holdings from September 2011 until she was laid off on March 30, 2014; and by Sussex County ARC from September 2009 until she was fired on March 9, 2014.

On April 13, 2014, appellant filed a claim for unemployment benefits based upon her work for each of her three employers. On May 21, 2014, a Deputy Claims Examiner (Deputy) found that appellant was disqualified for benefits because all three employers had allegedly discharged her for severe misconduct connected with the work under N.J.S.A. 43:21-5(b). Appellant appealed these determinations to the Appeal Tribunal (Tribunal).

Following a telephone hearing at which appellant and all three employers participated, the Tribunal found that Sussex County ARC terminated appellant's employment "because she was

caught on camera sleeping on the job." The Tribunal concluded that appellant's actions that evening constituted "simple misconduct" and disqualified her for benefits for the eight-week period between March 9, 2014 and May 3, 2014. After this period of disqualification, appellant became eligible again and collected all the benefits due to her for her work for Sussex County ARC.

With regard to appellant's two other employers, the Tribunal found that appellant "did not engage in any act that could be construed as misconduct." Accordingly, the Tribunal found appellant eligible for unemployment benefits without disqualification based upon her employment at Caringhouse Projects and AW Holdings. Appellant thereafter collected all the benefits due to her for her work with these two employers.

On August 28, 2016, appellant applied for ABT while she was participating in a vocational training program. The purpose of ABT is to provide benefits to workers who have been displaced from their employment while they attend training programs that teach them "new skills to reenter a more marketable area of the economy." Bonilla v. Bd. of Review, 337 N.J. Super. 612, 616 (App. Div. 2001).

In order to receive ABT, a claimant must meet a number of statutory requirements set forth in N.J.S.A. 43:21-60, including

two that are relevant to the present appeal. In pertinent part, N.J.S.A. 43:21-60 provides that ABT

shall be provided to any individual who:

a. Has received a notice of a permanent termination of employment by the individual's employer or has been laid off and is unlikely to return to his previous employment because work opportunities in the individual's job classification are impaired by a substantial reduction of employment at the worksite; [and]

b. Is, at the time of the layoff or termination, eligible, pursuant to the "unemployment compensation law," [N.J.S.A.] 43:21-1 et seq., for unemployment benefits[.]

As already noted, appellant was laid off from two of her employers, Caringhouse Projects and AW Holdings. The Tribunal found that appellant's third employer, Sussex County ARC, had terminated her for simple misconduct.

A Deputy initially granted appellant's application for ABT, and she collected these benefits for two weeks. However, the Deputy then issued a redetermination holding her ineligible for benefits for ABT because of her prior disqualification for simple misconduct in connection with her work at Sussex County ARC. The Deputy also requested that appellant refund the ABT she had already received.

Appellant filed an appeal with the Tribunal, arguing that even if she was not eligible for ABT because she had been

terminated for simple misconduct, rather than laid off, by Sussex County ARC, she still qualified for ABT based upon her employment with Caringhouse Projects and AW Holdings. On October 18, 2016, the Tribunal determined after a telephone hearing that appellant was ineligible for ABT under N.J.S.A. 43:21-60(a).

The Tribunal found that because appellant was terminated by Sussex County ARC for simple misconduct, her separation from employment was not due to "substantial reduction in work" as required by N.J.S.A. 43:21-60(a). The Tribunal did not address the fact that appellant had worked for two other employers and that both of them had laid her off because of a lack of work.

Appellant filed an appeal with the Board, which issued its final decision on December 5, 2016. Although the Board adopted the Tribunal's findings of fact, it disagreed with the Tribunal's conclusion that appellant was ineligible for ABT under N.J.S.A. 43:21-60(a). Instead, the Board denied her claim based upon N.J.S.A. 43:21-60(b) which, as stated above, provides that ABT benefits are not available to a claimant who "at the time of the layoff or termination," is not "eligible . . . for unemployment benefits."

In so ruling, the Board noted that Sussex County ARC terminated appellant on March 9, 2014 for simple misconduct and she would later be disqualified for benefits for an eight-week

period ending on May 3, 2014. Thus, the Board concluded that appellant was not eligible for unemployment benefits when she applied for them on the basis of her work for three separate employers on April 13, 2014. According to the Board, it did not matter that appellant was laid off by Caringhouse Projects and AW Holdings three weeks after Sussex County ARC terminated her, and she was eligible for unemployment benefits for her work with these two employers from March 30, 2014. The Board stated:

The fact that [appellant's] separation with two other employers were [sic] not for disqualifying reasons does not overcome the disqualification imposed with [Sussex County ARC]. Since [appellant] was not eligible for benefits after her termination, she is ineligible for [ABT] in accordance with N.J.S.A. 43:21-60(b).

This appeal followed.

On appeal, appellant argues that the Board erred when it found her ineligible for ABT under N.J.S.A. 43:21-60(b) because she was plainly eligible for unemployment benefits at the time she was laid off by Caringhouse Projects and AW Holdings. Therefore, appellant asserts she was entitled to ABT based upon her work with, and wages earned from, these two employers. We agree.

Our review of an administrative agency decision is limited. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). In reviewing the agency's factual findings, we give due regard to the agency's

expertise. Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992). Absent a finding that it was "arbitrary, capricious, or unreasonable," we will not disturb an agency's decision. Brady, 152 N.J. at 210.

To ascertain whether an agency's decision is arbitrary, capricious, or unreasonable, we must determine:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Lavezzi v. State, 219 N.J. 163, 171 (2014) (quoting In re Stallworth, 208 N.J. 182, 194 (2011)).]

"As a reviewing court, while we respect an agency's expertise, ultimately the interpretation of statutes and regulations is a judicial, not administrative, function and we are not bound by the agency's interpretation." Silver v. Bd. of Review, 430 N.J. Super. 44, 58 (App. Div. 2013). Therefore, we are "not 'bound by [an] agency's interpretation of a statute or its determination of a strictly legal issue[.]'" Lavezzi, 219 N.J. at 172 (quoting Norfolk S. Ry. Co. v. Intermodal Props., LLC, 215 N.J. 142, 165 (2013)).

"Our analysis of a statute begins with its plain language, giving the words their ordinary meaning and significance." In re Estate of Fisher, 443 N.J. Super. 180, 190 (App. Div. 2015) (citing State v. Olivero, 221 N.J. 632, 639 (2015)). When, as here, the language of a statute "clearly reveals [its] meaning, the court's sole function is to enforce the statute in accordance with those terms." Ibid.

Applying these principles, we are constrained to conclude that the Board's determination that appellant was not eligible for ABT based upon her work for Caringhouse Projects and AW Holdings was arbitrary, capricious, and unreasonable because it was contrary to the plain language of N.J.S.A. 43:21-60(b).¹ As noted above, this statute provides that in order to qualify for ABT, the claimant must be, "at the time of the layoff or termination, eligible . . . for unemployment benefits." Here, the record clearly demonstrates that appellant was eligible for unemployment benefits for her work with both Caringhouse Projects and AW Holdings on March 30, 2014, the date these employers laid her off. Thus, appellant was clearly "eligible" for unemployment benefits from these two employers "at the time of the layoff[,]" which is

¹ Consistent with its final decision, the Board does not assert on appeal that appellant failed to meet the requirements of N.J.S.A. 43:21-60(a).

all that N.J.S.A. 43:21-60(b) requires. Therefore, the Board should have granted appellant's application for ABT based upon her work with, and wages earned from, Caringhouse Projects and AW Holdings.

On appeal, the Board asserts that once appellant was disqualified for unemployment benefits for her work with Sussex ARC as of March 9, 2014, she was not "eligible" for these benefits when she was laid off three weeks later by her two other employers. It boldly states, "[t]he fact that [appellant] was terminated from two other employers for separate reasons does not negate her ineligibility." In making this argument, however, the Board does not cite to any statute, regulation, or decisional law in this State supporting this proposition.


It is well established that "[c]ourts should use common sense in interpreting statutes and avoid absurd results." Simpkins v. Saiani, 356 N.J. Super. 26, 36 (App. Div. 2002) (citation omitted). If the Board's reasoning were adopted, appellant would be punished for having worked for three separate employers and then having the misfortune of being fired by one of them before being laid off by the other two because of a lack of work. There is simply nothing in N.J.S.A. 43:21-60(b) that requires, or even suggests, that a disqualification based on a claimant's work with one employer should act as a bar to ABT based upon the claimant's separate work

history with two other employers, which resulted in her receipt of unemployment benefits without any period of disqualification. Therefore, we reject the Board's contention.

We reverse the final decision of the Board denying ABT and the request for refund. The case is remanded to the Division of Unemployment Insurance to determine the amount of ABT to which appellant is entitled for her employment with Caringhouse Projects and AW Holdings within thirty days of the date of this opinion.

Reversed and remanded. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION