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APPROVAL OF THE APPELLATE DIVISION**

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-3109-16T2

TONI L. LICCIARDELLI,

Petitioner-Appellant,

v.

BOARD OF REVIEW, DEPARTMENT OF  
LABOR and DOUGLAS A. BAKER, ESQ.,

Respondent-Respondents.

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Submitted March 13, 2018 – Decided May 9, 2018

Before Judges Mawla and DeAlmeida.

On appeal from the Board of Review, Department  
of Labor, Docket No. 093,552.

Toni L. Licciardelli, appellant pro se.

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

Respondent Douglas A. Baker has not filed a  
brief.

PER CURIAM

Petitioner Toni L. Licciardelli challenges a Board of Review  
(Board) decision affirming an Appeal Tribunal determination

disqualifying her from unemployment compensation benefits. We affirm.

I.

The record shows that petitioner began her employment as a legal secretary with the Law Office of Douglas A. Baker, a solo practitioner, on August 17, 1997. Petitioner's last day in the office was November 27, 2015, a Friday. From the following Monday, November 30, 2015, to December 4, 2015, petitioner texted her employer every day to call out sick from work. On December 5, 2015, petitioner was hospitalized. She contended that her spouse contacted her employer to inform him of the hospitalization. Baker denied having been contacted by petitioner, or her spouse after December 4, 2015. According to Baker, petitioner and her family provided no information with respect to petitioner's illness, expected period of recovery, or the anticipated date on which she would be able to return to work.

Petitioner was discharged from the hospital on December 11, 2015, after which she applied for disability benefits. On December 21, 2015, petitioner and her spouse visited Baker to retrieve the employer's portion of her disability benefits application. Petitioner, when asked, did not provide Baker with a date on which she expected to return to work. She instead indicated that her absence would be indefinite. Baker handed petitioner the completed

employer portion of the disability benefits application, along with the personal effects she left at the office because he did not know if or when petitioner might be returning. Baker asked petitioner for her copy of the office key, as he needed to give it to the secretary who was completing petitioner's work in her absence. Baker did not inform petitioner that she was terminated. According to Baker, this was the last contact that he had with petitioner or her family until her disability benefits were exhausted, and he was informed that she had applied for unemployment benefits.

Petitioner asserts that she was able to return to work as of June 1, 2016. She testified at the tribunal hearing that she called her employer on June 1, 2016, and June 3, 2016, to ask if Baker had work available for her, or, if no work was available, whether she could list Baker as a reference. Baker denies having been contacted by petitioner. Petitioner provided no proof, beyond her testimony, of having left messages for her employer on those dates. Although petitioner had Baker's personal cellphone number, she admitted that she did not attempt to contact him on that line, the office phone, or his cellphone when she did not receive a response to her messages.

Petitioner applied for unemployment benefits on June 5, 2016. The Deputy Director initially determined petitioner was

disqualified for benefits from December 6, 2015, because she voluntarily left her employment on that date without good cause attributable to the work. The Deputy Director determined that petitioner failed to provide her employer with medical documents indicating a date on which she would return to work, and failed to keep in contact with her employer about preserving her position for her eventual return to work. Petitioner appealed the Deputy Director's decision.

The Appeal Tribunal conducted telephone hearings on two days. In a November 16, 2016 decision the Appeal Tribunal determined that petitioner failed to produce credible evidence that she contacted her employer on June 1, 2016, and June 3, 2016, to report that she was available to work. The Appeal Tribunal rejected petitioner's contention that she reasonably believed that she was terminated on December 21, 2015, because she conceded that she did not ask her employer at that time whether she had been terminated. The Appeal Tribunal also noted her claims to have contacted her employer in June 2016, belie a belief that she had been terminated in December 2015. The Appeal Tribunal determined that petitioner was ineligible for benefits as of May 29, 2016.

The Board considered and adopted the findings of fact and opinion of the Appeal Tribunal, and, on February 2, 2017, affirmed the Appeal Tribunal decision. This appeal followed.

On appeal, petitioner challenges the Board's decision, arguing that the record establishes that Baker terminated her from her position on December 21, 2015, when he demanded the office key and returned her personal belongings. She also raises procedural arguments based largely on Baker's requests to postpone the hearings before the Appeal Tribunal.

## II.

Our review of decisions by administrative agencies is limited, with petitioners carrying a substantial burden of persuasion. In re Stallworth, 208 N.J. 182, 194 (2011); Brady v. Bd. of Review, 152 N.J. 197, 218 (1997). An agency's determination must be sustained "'unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record.'" Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)(quoting In re Hermann, 192 N.J. 19, 27-28 (2007)). "[I]f substantial evidence supports the agency's decision, 'a court may not substitute its own judgment for the agency's even though the court might have reached a different result[.]'" In re Carter, 191 N.J. 474, 483 (2006)(quoting Greenwood v. State Police Training Ctr., 124 N.J. 500, 513 (1992)). The burden of proof rests with the employee to establish a right to collect unemployment benefits. Brady, 152 N.J. at 218.

Under N.J.S.A. 43:21-5(a), a person is ineligible for unemployment benefits if he or she leaves work voluntarily, without good cause attributable to the work. N.J.A.C. 12:17-9.1(b) defines "good cause attributable to such work" as "a reason related directly to the individual's employment, which was so compelling as to give the individual no choice but to leave the employment." "The decision to leave employment must be compelled by real, substantial and reasonable circumstances not imaginary, trifling and whimsical ones." Domenico v. Bd. of Review, 192 N.J. Super. 284, 288 (App. Div. 1983). Further, "'[m]ere dissatisfaction with working conditions which are not shown to be abnormal or do not affect health, does not constitute good cause for leaving work voluntarily.'" Ibid. (quoting Medwick v. Bd. of Review, 69 N.J. Super. 338, 345 (App. Div. 1961)). A petitioner who leaves work for a personal reason, no matter how compelling, is subject to disqualification. Self v. Bd. of Review, 91 N.J. 453, 460 (1982).

The record contains substantial credible evidence supporting the Board's conclusion that petitioner voluntarily left her employment on December 21, 2015, when she applied for disability benefits without providing her employer with a date, or estimated date, on which she expected to return to work. She thereafter failed to keep her employer apprised of the progress of her recovery. Although Baker disputes having received voice messages

purportedly left by petitioner on his office phone in June 2016, even under petitioner's recitation of the facts, she did not contact her employer for nearly six months seeking to return to work. Petitioner's acts are not consistent with those of an employee who took the steps necessary to preserve her position while absent for medical reasons.

The record also supports the Board's determination that petitioner was not terminated on December 21, 2015. Petitioner produced no evidence that Baker informed her that she was terminated on that date. The evidence supports the conclusion that Baker returned petitioner's personal items, and requested her office key, because she did not provide a date on which she expected to return, leaving Baker with no idea when, or if, petitioner would be available to work. In addition, as the Appeal Tribunal aptly noted, petitioner's purported calls to Baker in June 2016 to express her availability to work contradict her contention that she was terminated by Baker in December 2015.

Petitioner has not established that the Board's decision was arbitrary, capricious, or unreasonable. Russo, 206 N.J. at 27. To the extent we have not directly addressed any of petitioner's contentions, we find they are without merit sufficient to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

A handwritten signature in black ink, appearing to be 'JMA', written over the printed text 'CLERK OF THE APPELLATE DIVISION'.

CLERK OF THE APPELLATE DIVISION