

**NOT FOR PUBLICATION WITHOUT THE  
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-4755-14T4

FRED M. BURG,

Appellant,

v.

BOARD OF REVIEW,  
DEPARTMENT OF LABOR  
AND WORKFORCE DEVELOPMENT  
and BROOKDALE COMMUNITY  
COLLEGE,

Respondents.

---

Submitted December 21, 2017 – Decided March 1, 2018

Before Judges Simonelli and Rothstadt.

On appeal from the Board of Review, Department  
of Labor and Workforce Development, Docket No.  
373,834.

Fred M. Burg, appellant pro se.

Christopher S. Porrino, Attorney General,  
attorney for respondent Board of Review  
(Melissa Dutton Schaffer, Assistant Attorney  
General, of counsel; Alan C. Stephens, Deputy  
Attorney General, on the brief).

Cleary Giacobbe Alfieri and Jacobs, LLC,  
attorneys for respondent Brookdale Community  
College, join in the brief of respondent Board  
of Review.

PER CURIAM

Appellant, Fred M. Burg, appeals from three final agency decisions issued on May 4, 2015, by respondent the Board of Review, (Board), Department of Labor (DOL). The first decision, docket number 373,834, determined that appellant was ineligible for unemployment benefits for four periods in 2011 and 2012, and found him ineligible for federal benefits that were available to qualified recipients under the Emergency Unemployment Compensation Act of 2008 (EUCA), Pub. L. No. 110-252, §§ 4001-07, Title IV, 122 Stat. 2323, 2353-57 (2008). The second determination, docket number 405,317, found appellant ineligible for unemployment benefits for approximately four weeks in the summer of 2012, and liable for a refund of \$280, based upon assurances made by his employer, respondent Brookdale Community College (Brookdale), that appellant would be returning to work in the fall of that year. The third decision, docket number 435,339, found appellant liable for a refund of \$156 for benefits he received for one week in January 2012, during a period he was ineligible to receive them.

On appeal, appellant contends that the demand for refunds for benefits he received for one week in January 2012 was incorrect and that he was entitled to a refund of \$456 for three weeks of benefits in September 2012, which the Board found he was eligible

to receive. He also argues that the DOL's failure "to file on [his] behalf for . . . benefits under the [EUCA] was incorrect [and he] should be reimbursed." We find these contentions to be without merit. We affirm each of the Board's decisions.

Appellant was a part-time, adjunct professor at Brookdale since 2005. He accepted offers to teach in advance of each semester during the preceding semester. According to appellant, he has taught each consecutive semester since 2005 except for one semester in 2007.

Appellant initially filed for unemployment benefits in 2009 as he was not teaching during the summer. On July 27, 2009, a deputy director notified appellant that he was ineligible because he was "claiming benefits during a period between academic terms, between successive academic years" and he had "reasonable assurance" that he would be providing the same services in the fall. Appellant appealed that determination and after a hearing before the Appeal Tribunal, the determination was reversed because it was not based upon his employment with Brookdale but with another part-time employer. Accordingly, he was approved for benefits for the period between May 24 and October 10, 2009. According to the Appeal Tribunal, the last date appellant received

benefits for his claim was "May 22, 2010,<sup>1</sup> because the year had ended and [at that time he] had a balance left . . . of \$1826[.]"

Appellant did not file a new or transitional claim until December 18, 2011, when he filed based upon his not teaching during Brookdale's winter break. He also sought to "pre-date" another claim for the benefit period he missed.<sup>2</sup> A deputy director denied the claims after he determined: (1) that appellant was not eligible for benefits from December 18 because he had "reasonable assurance" of returning to work after an academic break,<sup>3</sup> and (2) he was also ineligible from May 23, 2010 through December 17, 2011 because he failed to report. Appellant appealed those determinations, which were docketed as number 373,834, arguing that he did not have "reasonable assurance" of returning to Brookdale in the spring semester, and that he was eligible for EUCA benefits from May 23, 2010 to December 17, 2011.

After a hearing, the Appeal Tribunal found: (1) appellant was ineligible for benefits for the period starting December 18, 2011 through January 14, 2012, because he was not working during the

---

<sup>1</sup> We have not been supplied with any documents explaining why appellant continued to receive benefits after the October 2009 date.

<sup>2</sup> Copies of these claims were not provided to us.

<sup>3</sup> We glean these facts from the record, as a copy of the deputy director's denial of this claim was not provided to us.

college's "customary holiday period and had reasonable assurance of recall during the next academic period or term;" (2) that he failed to report from May 23, 2010 through December 17, 2011; and (3) that appellant was eligible for benefits from December 18, 2011 through July 21, 2012, as he was eligible for work.

The Board agreed with the Appeal Tribunal's determination about appellant's failure to report in accordance with N.J.A.C. 12:17-4.2(a), from May 23, 2010 through December 17, 2011. However, it modified the Appeal Tribunal's decision as to the period of ineligibility, so that it found appellant was ineligible for benefits during the period of December 25, 2011 through January 21, 2012, pursuant to N.J.S.A. 43:21-4(g)(3). The Board also found that although appellant was eligible for benefits from December 18, 2011, through December 24, 2011, "since his earnings exceeded his partial weekly benefit rate, the week [was] not a compensable week[.]" As a result, the Board concluded that appellant could "only be held not ineligible for benefits pursuant to N.J.S.A. 43:21-4(c), from January 22, 2012 through July 14, 2012, as he was available for work."

In accordance with the Board's decision, the DOL demanded a refund of \$156 from appellant for the week ending January 21, 2012, and \$736 for the weeks ending August 25, 2012, and September

15 through September 29, 2012. Appellant made those payments on December 11, 2012, without prejudice.

Appellant filed an appeal with us from the Board's final decision. In response to a motion filed by the Board, we remanded the matter to the Board in October 2013 without retaining jurisdiction. Prior to filing his appeal, appellant filed separate appeals from the DOL's refund demands. Those appeals remained pending until they were considered by the Appeal Tribunal, and then by the Board, along with the appeal from the original ineligibility determinations that we remanded.

On remand, the Board vacated its prior decision and remanded the matter to the Appeal Tribunal to be heard in conjunction with appellant's appeals from the refund requests. The Appeal Tribunal conducted a telephonic hearing as to all three matters on April 7, 2015. The next day it issued three written decisions addressing each of appellant's appeals.

Turning first to the determination of his ineligibility under docket number 373,834, the Appeal Tribunal found that for the purposes of appellant's claim, his last day of work at Brookdale was December 21, 2011, "when the fall session ended." At that time, appellant expected to return to work on January 18, 2012 when the new semester began because in December 2012 he received and accepted an offer to teach the following semester.

The Appeal Tribunal then reviewed appellant's 2009 claim that last paid appellant benefits for the week ending May 22, 2010, the end of the benefit year, at a weekly benefit amount of \$584, which left him with a remaining balance of \$1826 of his then maximum benefit amount of \$15,184. The Appeal Tribunal noted, "had [appellant] opened a transitional claim as of [May 23, 2010], he would have been eligible for a valid claim with a weekly benefit rate of \$377[] and a maximum benefit amount of [\$9802]." It found that appellant did not file a new claim at that time because he mistakenly believed that "he may be eligible for an extension on his 2009 claim under the [EUCA]." Although it found that appellant visited his local unemployment office, he chose not to wait on the long lines and left without ever discussing whether he was eligible for EUCA benefits or if he needed to file a new claim. He did not file a claim until December 18, 2011, "establishing a weekly benefit rate of \$280[], a partial weekly benefit rate of \$336[] and a maximum benefit amount of [\$7280]." And, since he made that claim appellant was "available and actively seeking work." For the week ending December 24, 2011, appellant earned \$360.

Turning to the applicable law, the Appeal Tribunal relied on and quoted from N.J.S.A. 43:21-4(g)(1) to (4), which addresses the ineligibility of instructors at educational institutions for benefits for periods between academic terms where the instructor

had "a contract or a reasonable assurance" of returning in successive academic years or terms. N.J.S.A. 43:21-4(g)(1). The statute also addresses an individual's ineligibility for holiday and vacation periods where he or she works "immediately before such vacation period or holiday recess, and there is a reasonable assurance that [the] individual will perform such services in the period immediately following such period or holiday recess[.]" N.J.S.A. 43:21-4(g)(3). Based on these provisions, it concluded that even though appellant did not have a written contract for the spring 2012 semester, he had received a letter offering him a position as he had in the past, and was therefore ineligible for benefits during the intersession because he "had a reasonable assurance of employment."

The Appeal Tribunal then turned to appellant's claim that he should have been eligible for EUCA benefits and decided to address the issue even though there had been no determination made by the Deputy Director as to appellant's eligibility for those benefits. It reviewed the eligibility requirements under the EUCA and noted that a claimant is ineligible for those benefits if he or she did not exhaust a claim for benefits made after 2006 or was "eligible for any regular unemployment benefits in New Jersey or any other state." Applying these provisions, the Appeal Tribunal concluded appellant "would have been eligible for a regular unemployment



claim as of [May 23, 2010 and was t]herefore ineligible for EUC[A] benefits on the claim dated [May 24, 2009]."

Next, the Appeal Tribunal addressed the impact of appellant's failure to report. It quoted from N.J.A.C. 12:17-4.1 and 4.2, which obligate a claimant to report in person in order to file an initial claim and to continue reporting as directed by the Division of Unemployment. Applying those regulations, the Appeal Tribunal determined that appellant's failure to file a claim because he was supposedly "waiting for an extension on his [2009] claim" was not a legitimate basis for failing to comply with the reporting regulations. It concluded that appellant was ineligible for benefits from May 23, 2010 through December 17, 2011.

The Appeal Tribunal then quoted from N.J.S.A. 43:21-4(c)(1), which imposes an obligation on claimants to demonstrate they are unemployed and "actively seeking work" in order to be eligible for benefits, if otherwise qualified. It also noted N.J.S.A. 43:21-19(m)(1) defines "unemployed" as being when a claimant is not "engaged in full-time work and with respect to which his remuneration is less than his weekly benefit rate[.]" Using that definition, it found appellant was "available and actively seeking work and had earnings of \$360[] during the first week of [his] claim" in December 2011. It therefore found appellant eligible for benefits from December 18, 2011 through December 24, 2011,

"but since his earnings exceeded his partial weekly benefit rate of \$366[], the week [was] not a compensable week[.]" As a result, it concluded that the only portion of the eligibility period claimed by appellant that was valid was January 22, 2012 through July 14, 2012, "as he was available [to] work."

Addressing appellant's appeal under docket number 405,317, the Appeal Tribunal issued a separate decision discussing his claim that he was entitled to benefits during the last week of August 2012 and three succeeding weeks in September 2012. Applying the same law it did in its first decision, the Appeal Tribunal concluded again that appellant had reasonable assurance of returning to work in Fall 2012 and should not have received benefits for the week ending August 25, 2012. However, it determined that he was not obligated to refund his benefits for the three weeks he received them in September. As a result, the Appeal Tribunal directed that appellant refund only \$280 of the \$736 demanded by the DOL, as he was not liable for the remaining \$456.

In its last decision, the Appeal Tribunal addressed appellant's claims under docket number 435,339 in which he challenged the DOL's demand for a refund of \$156. Relying on its finding that appellant was ineligible for benefits for the week

ending January 21, 2012, it concluded that he was liable for the refund.

Appellant filed appeals from the Appeal Tribunal's decisions to the Board. On May 4, 2015, the Board issued three decisions in which it modified the Appeal Tribunal's findings, but agreed with its conclusions. In its decision addressing docket number 373,834, it found that the Appeal Tribunal erred in establishing one of appellant's start dates for his period of ineligibility and that it misstated the controlling statute. According to the Board, "[s]ince the claimant last worked on December 21, 2011, before the school closed for holiday recess, and returned to work on January 18, 2012, the period of ineligibility under reasonable assurance must be from December 25, 2011 through January 21, 2012, pursuant to N.J.S.A. 43:21-4(g)(3), not N.J.S.A. 43:21-4(g)(1) as established, in error, [by] the Appeal Tribunal."

The Board rejected appellant's contentions that he was eligible for unemployment because he was not guaranteed employment each semester, as any offer was subject to enrollment and other factors. The Board found that the contingency did not diminish the reasonable assurance finding, and it found that the finding was "substantiated [because appellant] returned to work [on] January 18, 2012."

The Board reached a similar conclusion about appellant's contention that he should have been found eligible for EUCA benefits even though he had not exhausted his benefits and had failed to report or make a claim during the benefit year. The Board affirmed the Appeal Tribunal's conclusions as modified. It issued two additional decisions agreeing with the Appeal Tribunal's calculation of the amount appellant was required to refund. This appeal followed.

Appellant argues three points on appeal: (1) the Board's requirement that he refund \$156 was based upon the Appeal Tribunal identifying the wrong date for when appellant returned to work in January 2012; (2) as he already refunded the originally demanded \$736, he is entitled to receive the \$456 that the Appeal Tribunal determined he should not have to refund;<sup>4</sup> and (3) he was entitled to EUCA benefits. We disagree with these contentions.

Our scope of review of an administrative agency's final determination is narrowly limited and highly deferential. "So long as the Board's decision is supported by sufficient credible evidence in the record and was neither 'arbitrary, capricious, [nor] unreasonable,' it will be affirmed." In re Y.L., 437 N.J.

---

<sup>4</sup> The Board does not dispute appellant's entitlement to these funds and suggests that appellant should "petition the [DOL] for reimbursement[.]"

Super. 409, 412 (App. Div. 2014) (alteration in original) (quoting Brady v. Bd. of Review, 152 N.J. 197, 210 (1997)). Likewise, the factual findings of the agency must stand unless they are not supported by sufficient credible evidence. See *ibid.*

Applying our limited scope of review, we find appellant's argument on appeal to be "without sufficient merit to warrant discussion in a written opinion[.]" R. 2:11-3(e)(1)(E). We are satisfied that the Board's decisions do not violate the state or federal constitutions, are not contrary to express or implied legislative policies, and are supported by substantial, credible evidence in the record. Brady, 152 N.J. 210-11. We therefore find no basis to disturb the Board's decision and affirm substantially for the reasons expressed by the Board in its written decisions.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION