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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-5383-15T3

FRANK D. RIKER,

Claimant-Appellant,

v.

BOARD OF REVIEW, DEPARTMENT  
OF LABOR, JEFFERSON TOWNSHIP,  
and THE COUNTY OF BERGEN,

Respondents-Respondents.

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Submitted January 23, 2018 – Decided February 6, 2018

Before Judges Reisner and Mayer.

On appeal from the Board of Review, Department  
of Labor, Docket No. 078,983.

Frank D. Riker, appellant pro se.

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

Respondents Jefferson Township and the County  
of Bergen have not filed a brief.

PER CURIAM

Claimant appeals from a June 6, 2016 final decision of the Board of Review (Board) denying him benefits under the Temporary Disability Benefits Law (TDBL) in connection with his family leave. See N.J.S.A. 43:21-39.1. After reviewing the record submitted to us, we remand this case to the Board for reconsideration.

Specifically, we remand for the Board to consider the interplay between the Family Leave Act (FLA), N.J.S.A. 34:11B-1 to -16 and the family leave sections of the TDBL, N.J.S.A. 43:21-39.1 to -39.4, and the regulations adopted pursuant to each respective statute.<sup>1</sup> Before rendering its decision on remand, the Board shall permit claimant to brief the issue and shall consult with the Division on Civil Rights, the agency charged with interpreting and enforcing the FLA. See Lemelledo v. Benefit Mgmt. Corp., 150 N.J. 255, 273-74 (1997).

Claimant was employed full-time as an animal control officer for Bergen County and part-time as an on-call animal control officer for Jefferson Township. After his child was born, he applied for and was granted family leave from his full-time position. However, he continued to work one weekend day per week, on an on-call basis, at his pre-existing part-time job.

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<sup>1</sup> Claimant, who is self-represented, did not brief this issue on appeal, and neither did the Board. Accordingly, we deem it most appropriate to remand the matter to the Board, to give that agency an opportunity to consider the issue.

There is no dispute that, under the FLA, claimant was legally entitled to take family leave from his full-time job. See N.J.S.A. 34:11B-4. There is no record evidence that he was entitled to take family leave from his part-time job, and he did not take family leave from that position.

Under regulations promulgated by the Division on Civil Rights to implement the FLA, an employee is entitled to work part-time at another pre-existing job while taking family leave from his or her full-time job. N.J.A.C. 13:14-1.8. Moreover, by its terms, the TDBL appears to be intended to work in tandem with the FLA. See N.J.S.A. 43:21-27(o); N.J.S.A. 43:21-39.1(d). However, the Board of Review denied claimant's application for family temporary disability leave benefits, based on the Board's interpretation of its regulation, N.J.A.C. 12:21-3.10(a). That regulation permits an employee to take intermittent family leave "where both the covered individual and the employer agree that the covered individual will be permitted to take family leave . . . in non-consecutive periods of seven days or more. . . ." The Board apparently interpreted the regulation as prohibiting an employee from working at any job during the leave period, even a pre-existing part-time job from which the employee had not taken family leave and from which the employee might not be legally entitled to take such leave.

The Board also relied on language from the TBDL, N.J.S.A. 43:21-39.3,<sup>2</sup> authorizing an employee and employer to agree that the employee could take leave "during non-consecutive weeks." The Board interpreted the quoted language as meaning that the employee had to take seven days of leave at a time, even if his or her regular work week at the covered employer was less than seven days,<sup>3</sup> and as prohibiting the employee from working part-time at a different employer from which the employee was not taking family leave.

Where, as here, an employee works at two jobs, the Board's construction of its regulation, and of the TBDL, would potentially require the employee to quit or risk being fired from an existing part-time job, in order to obtain family leave temporary disability benefits based on a family leave taken from the employee's existing full-time job. This interpretation may be contrary to the purpose of the FLA and the family leave amendments to the TDBL, as well as contrary to the Division on Civil Rights regulation entitling

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<sup>2</sup> Both the Board and the Appeal Tribunal mis-cited the statute as N.J.S.A. 43:21-29.3.

<sup>3</sup> The Board and the Division on Civil Rights appear to define the term "week" differently. The FLA regulations define "intermittent leave" as "separate periods of time where each period of leave is at least one workweek." N.J.A.C. 13:14-1.2 (emphasis added). In this case, claimant took leave from his full-time employer during several complete workweeks. He was on-call at his part-time job only on one weekend day.

an employee to continue pre-existing part-time work during a family leave from a full-time job. However, because the issue was not briefed, and because the Division on Civil Rights is not a party to this appeal, we deem it most appropriate to remand the matter to the Board for reconsideration. As previously noted, the Board shall consult with the Division on Civil Rights before rendering its decision on remand.

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