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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-1094-20**

M.D.,

Appellant,

v.

**BOARD OF REVIEW,
DEPARTMENT OF LABOR,
and QUALITY FIRST
BASEMENTS,**

Respondents.

Submitted March 16, 2022 – Decided June 1, 2022

Before Judges Gilson and Gummer.

On appeal from Board of Review, Department of Labor,
Docket No. 199710.

M.D., appellant pro se.

Matthew J. Platkin, Acting Attorney General, attorney
for respondent, Board of Review (Donna Arons,
Assistant Attorney General, of counsel; Mikhaeil
Awad, Deputy Attorney General, on the brief).

PER CURIAM

Appellant M.D. appeals from a February 6, 2020 final agency decision by the Board of Review (Board), which determined that she was ineligible for unemployment benefits and was liable to refund \$6,822 she had received in benefits when she was ineligible.¹ Because the Board's factual findings are supported by substantial credible evidence and its determinations are not an abuse of discretion, we affirm.

Appellant had been employed as a call-center representative and, in 2019, she was fired because her employer claimed that she took too many bathroom breaks and missed too many days of work. She filed a claim for unemployment benefits effective July 21, 2019, and received \$6,822 in benefits from that date through November 23, 2019.

On November 26, 2019, the Deputy of the Division of Unemployment and Disability Insurance (Deputy) conducted a telephone interview with appellant. During that interview, which was recorded, appellant stated that she had been unable to work after June 2019 for medical reasons. The Deputy asked appellant if she was physically able to work. Appellant stated that she was not physically able to work because she had been suffering from severe anxiety. She explained

¹ We use initials to protect appellant's privacy interests because the appeal involves references to some of her medical conditions.

that her doctor had prescribed anxiety medication because she was having panic attacks. Based on appellant's statement, the Deputy determined that appellant was ineligible for benefits because she was unable to work. The Deputy also determined that appellant was liable to refund the benefits she had received.

After receiving a letter outlining the Deputy's determination, appellant administratively appealed, and a one-day hearing was conducted before an Appeal Tribunal (Tribunal). At the hearing, appellant testified that she was actively seeking work after she was fired in June 2019. She acknowledged, however, that she had applied for only two jobs during the time that she had been receiving unemployment benefits.

The Tribunal found that appellant was ineligible for benefits under N.J.S.A. 43:21-4(c)(1) because she was not able, available, and seeking work from July 2019 through December 2019. The Tribunal also found that claimant was liable to refund \$6,822 in benefits she had received while she was ineligible. Appellant appealed the Tribunal's decision to the Board but, on February 6, 2020, the Board affirmed the Tribunal's decision.

Appellant now appeals from the Board's final decision. She contends that she always has been "ready and able" to work and that she has been working since December 2019. To be eligible for unemployment benefits, the claimant

must establish that she was (1) able to work, (2) available for work, and (3) actively seeking work for the period she applied for benefits. N.J.S.A. 43:21-4(c)(1); N.J. Dept. of Lab. & Workforce Dev. v. Crest Ultrasonics, 434 N.J. Super. 34, 45 (App. Div. 2014).

Our scope of review of an agency determination is limited. D.C. v. Div. of Med. Assistance & Health Servs., 464 N.J. Super. 343, 352 (App. Div. 2020). We normally "defer to the Board when its factual findings are based on 'sufficient credible evidence' in the record." Lourdes Med. Ctr. of Burlington Cnty. v. Bd. of Rev., 197 N.J. 339, 367 (2009) (quoting Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997)). "We are not permitted to review the case as though we were the original factfinder and substitute our judgment for any disagreements we might have with the Board. Rather, we must determine whether the Board could reasonably have reached its conclusion based on the proofs." Ibid. (internal citations omitted) (citing Brady, 152 N.J. at 210).

In essence, appellant disputes the Tribunal's factual finding that she was not able and not seeking work while she was receiving benefits. The Board adopted the fact findings made by the Tribunal. The Tribunal relied on the recorded interview conducted by the Deputy and rejected appellant's testimony at the hearing. In that regard, the Tribunal made a credibility finding, and our

scope of review does not permit us to second-guess that finding when it is supported by substantial evidence in the record. D.C., 464 N.J. Super. at 352-53. Based on the statements appellant made to the Deputy, there was substantial credible evidence that appellant was unable to work while she was receiving benefits. Accordingly, we discern no basis for disagreeing with that fact finding. See Lourdes Med. Ctr. of Burlington Cnty., 197 N.J. at 367.

If a person receives unemployment benefits and it is later determined that he or she was not eligible for those benefits, that person is required to refund the benefits. N.J.S.A. 43:21-16(d); Sullivan v. Bd. of Rev., Dept. of Lab., ___ N.J. Super. ___, ___ (App. Div. 2022) (slip op. at 10) (quoting Bannan v. Bd. of Rev., 299 N.J. Super. 671, 674 (App. Div. 1997)). We have explained that "N.J.S.A. 43:21-16(d) requires the full repayment of unemployment benefits received by an individual who, for any reason, regardless of good faith, was not actually entitled to those benefits." Sullivan, ___ N.J. Super. at ___ (slip op. at 10). Consequently, there is no factual or legal basis for us to disagree with the Board's determination that appellant was required to refund the benefit she received.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION