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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0113-21**

ASHLEY ELNAGGAR,¹

Appellant,

v.

**BOARD OF REVIEW,
DEPARTMENT OF LABOR,
and HR SERVICE GROUP,
LLC,**

Respondents.

Submitted December 21, 2022 - Decided January 11, 2023

Before Judges Mayer and Puglisi.

On appeal from the Board of Review, Department of Labor and Workforce Development, Division of Unemployment Insurance, Docket No. 215609.

Ashley Elnaggar, appellant pro se.

¹ Appellant's last name was improperly spelled in the record as Elnagger. Although appellant's letter brief contains both spellings, this opinion reflects the correct spelling of her last name as she indicated in the August 28, 2020 telephonic hearing, which is Elnaggar.

Mathew J. Platkin, Attorney General, attorney for respondent Board of Review (Donna Arons, Assistant Attorney General, of counsel; Roger Castillo, Deputy Attorney General, on the brief).

PER CURIAM

Ashley Elnaggar appeals from an August 5, 2021 final agency decision by respondent Board of Review (Board) affirming a decision by the Division of Unemployment and Disability Insurance (Division) requiring her to refund an overpayment of \$3,113 in unemployment benefits. We affirm.

Elnaggar was employed by HR Service Group, LLC and worked as a teacher's assistant at various times between 2018 and March 2020, when she lost her job due to forced school closures caused by the COVID-19 pandemic. In 2019, Elnaggar was unemployed during the summer months and winter holidays. On June 16, 2019, Elnaggar filed a claim for unemployment benefits. She filed additional unemployment claims in December 2019 and March 2020.

Based on an initial review of Elnaggar's June 2019 claim, the Division determined she worked twenty-seven base weeks during her established base year, which began January 1, 2018, and ended December 31, 2018.² Initially,

² A base week is defined as "any calendar week during which the individual earned in employment from an employer remuneration not less than an amount [twenty] times the minimum wage in effect." N.J.S.A. 43:21-19(t)(3). For

the Division's Deputy Director (Deputy) determined Elnaggar worked twenty base weeks in 2018 and earned \$16,505.77 in total wages.³ From this calculation, the Deputy found Elnaggar was entitled to an unemployment benefit of \$495 per week.⁴ Elnaggar received benefits at this rate for the weeks ending June 22, 2019 through September 7, 2019; December 28, 2019 through January 4, 2020; and March 21, 2020 through May 23, 2020.

In June 2020, the Division received updated information reflecting Elnaggar worked an additional seven weeks in the fourth quarter of 2018, for a total of twenty-seven weeks during the base year. Based on the updated information, the Deputy issued a redetermination on June 10, 2020, reducing

claims filed in 2019, such as Elnaggar's claim, a base week is one in which a claimant earned at least \$177.00.

³ Using 2018 as the base year, the Deputy found Elnaggar worked ten base weeks in the first quarter of the year, earning \$7,741.27 in wages; ten base weeks in the second quarter, earning \$5,806.50 in wages; no base weeks worked nor earnings in the third quarter; and no base weeks worked in the fourth quarter, but \$2,958 earnings for the fourth quarter.

⁴ To calculate the weekly benefit rate, the Deputy first determines the average weekly wage by dividing an individual's total wages for the base year by the number of base weeks in which such wages were earned, pursuant to N.J.S.A. 43:21-19(u); then the weekly benefit rate is calculated as sixty percent of the average weekly wage, pursuant to N.J.S.A. 43:21-3(c). Elnaggar's initial average weekly wage was determined by dividing \$16,505.77 by twenty weeks, which is \$825.29. Her weekly benefit rate was sixty percent of \$825.99, or \$495.17.

Elnaggar's benefit rate to \$366 per week. Based on the recalculation, the Deputy determined Elnaggar received \$3,113 in overpaid unemployment benefits. On June 11, 2020, the Deputy mailed Elnaggar a request for refund of the overpayment amount.

Elnaggar appealed the Deputy's determination to an Appeal Tribunal (Tribunal). On August 28, 2020, the Tribunal conducted a telephonic hearing and issued a decision affirming the Deputy's determination, finding Elnaggar received an overpayment of unemployment benefits and was obligated to refund \$3,113.

Elnaggar appealed the Tribunal's decision. In a decision mailed on December 17, 2020, the Board remanded the case to the Tribunal "for additional testimony from [Elnaggar] and the [Division], concerning the cause of the refund."

On February 1, 2021, the Tribunal held a second telephonic hearing. During the hearing, the examiner explained Elnaggar's weekly benefit rate had been reduced based on the updated employment information received by the Division. Elnaggar did not provide any information or documentation contradicting the Division's findings.

In a decision mailed on February 11, 2021, the Tribunal found the redetermination correctly reduced Elnaggar's weekly benefit rate from \$495 to \$366 based on total earnings of \$16,505.77 and an updated base week of twenty-seven weeks worked. Because Elnaggar provided no evidence to the contrary, she was obligated to refund the overpayment in the sum of \$3,113.

Elnaggar again appealed the Tribunal's decision. In a decision mailed on August 5, 2021, the Board affirmed the Tribunal's determinations, finding no abuse of discretion.

On appeal, Elnaggar argues she should not be responsible for reimbursement of monies erroneously paid to her because of the Division's negligence, and she cannot afford to do so.

The scope of review of an administrative agency's final determination is limited. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). The agency's decision may not be disturbed unless shown to be arbitrary, capricious, unreasonable, or inconsistent with applicable law. Ibid. We afford "[w]ide discretion . . . to administrative decisions because of an agency's specialized knowledge." In re Request to Modify Prison Sentences, 242 N.J. 357, 390 (2020). An administrative agency's final decision "will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that

it lacks fair support in the record." Saccone v. Bd. of Trs., Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014) (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)).

In reviewing an agency's decision, the court "must be mindful of, and deferential to, the agency's 'expertise and superior knowledge of a particular field.'" Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009) (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)). "A reviewing court 'may not substitute its own judgment for the agency's, even though the court might have reached a different result.'" In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 483 (2007)). Our review is not designed "'to merely rubberstamp an agency's decision,'" but rather, "we are constrained 'to engage in a careful and principled consideration of the agency record and findings.'" Sullivan v. Bd. of Rev., Dept. of Labor, 471 N.J. Super. 147, 156 (App. Div. 2022) (quoting Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 191 (App. Div. 2010)).

Although the Division's initial calculation of Elnaggar's weekly benefit rate was based on inaccurate or incomplete employment information, the Division may still recover the overpayment of unemployment benefits. When the Division determines a person "has received any sum as benefits . . . while

otherwise not entitled to receive such sum as benefits, . . . such person, unless the director . . . directs otherwise by regulation, shall be liable to repay those benefits in full." N.J.S.A. 43:21-16(d).⁵ The statute "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, 471 N.J. Super. at 155 (quoting Bannan v. Bd. of Rev., 299 N.J. Super. 671, 674 (App. Div. 1997)). Thus, even though Elnaggar acted in good faith and was not at fault regarding the miscalculation, she is nevertheless required to reimburse the overpayment.

This court has acknowledged that although recoupment may impose a hardship on an individual, the process "is necessary to preserve the ongoing integrity of the unemployment compensation system." Bannan, 299 N.J. Super. at 675. To ensure the State's unemployment fund is not depleted, the Board must seek repayment of erroneously paid unemployment benefits, even if the claimant received the benefits in good faith. Id. at 674-75; see also Fischer v. Bd. of Rev., 123 N.J. Super. 263, 266 (App. Div. 1973) (obligating a claimant to refund

⁵ Effective July 31, 2023, N.J.S.A. 43:21-16(d) will mandate a "person shall not be liable to repay all or any portion of the overpayment if . . . the person received the overpayment of benefits because of . . . errors by the division." Under the new statutory language, Elnaggar's argument would be meritorious, but this future revision is inapplicable to the present dispute.

benefits for which she was ineligible despite "her conceded good faith in applying for the benefits."). A governmental entity such as the Division is entitled to seek repayment unless the claimant can demonstrate a "'manifest injustice.'" Sullivan, 471 N.J. Super. at 157 (quoting Aqua Beach Condo. Ass'n v. Dep't of Cmty. Affairs, Bureau of Homeowner Prot., New Home Warranty Program, 186 N.J. 5, 20 (2006)). However, "even-handed application of fairly adopted and clear regulations debunks any claim of manifest injustice." Ibid. (internal quotation marks omitted).

It is undisputed Elnaggar worked twenty-seven base weeks in 2018 and her redetermined weekly rate of \$366 was correctly calculated. There is no evidence the Board's decision was "arbitrary, capricious, or unreasonable" nor without "fair support in the record." Saccone, 219 N.J. at 380. The Division even-handedly applied the State's unemployment regulations in seeking a refund of Elnaggar's benefits, and Elnaggar must repay the benefits to preserve the operation of the unemployment compensation system.


Although Elnaggar may have suffered financial hardships because of her unemployment, she has not demonstrated the Division's mistake caused her to suffer a "manifest injustice," and thus, the Division is entitled to recoup the overpaid unemployment benefits.

For the first time on appeal, Elnaggar argues she is entitled to receive COVID-19 relief unemployment benefits from March 16, 2020 to September 8, 2020. This claim was not raised before the Board and we decline to address it for the first time on appeal. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). Nevertheless, we note the Division may recover an overpayment by deducting future unemployment benefits to which the individual is entitled. See N.J.S.A. 43:21-16(d). According to the Board, the benefits to which Elnaggar was entitled during 2020 were applied toward the Division's recoupment of the erroneous overpayment.

To the extent we have not specifically addressed any remaining arguments, it is because we consider them sufficiently without merit to require 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.


CLERK OF THE APPELLATE DIVISION