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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2463-21**

CLAUDETTE PARKER,

Plaintiff-Appellant,

v.

**BOARD OF REVIEW,
DEPARTMENT OF LABOR,
and ATRIUM OF
LAWRENCEVILLE,**

Defendants-Respondents.

Submitted August 29, 2023 – Decided September 18, 2023

Before Judges Gooden Brown and Berdote Byrne.

On appeal from the Board of Review, Department of Labor and Workforce Development, Docket No. 201904.

Claudette Parker, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent (Donna Arons, Assistant Attorney General, of counsel; Gina Labrecque, Deputy Attorney General, on the brief).

PER CURIAM

Claudette Parker appeals from the March 9, 2022, final agency decision of the Board of Review (Board), Department of Labor, dismissing her appeal of the Appeal Tribunal's (Tribunal's) ruling because the appeal was not filed within the strict time frame prescribed by N.J.S.A. 43:21-6(c). We affirm.

We discern the following facts from the record. Parker filed a claim for unemployment compensation benefits on July 7, 2019, and received benefits for the weeks ending July 13, 2019, through September 28, 2019, totaling \$3,480, based on her part-time employment as a certified nurse's aide. On December 24, 2019, the Deputy of the Division of Unemployment Insurance (Deputy) determined that Parker was ineligible for unemployment benefits from April 28, 2019, because she "was unable to work." That same day, December 24, 2019, the Director of the Division of Unemployment Insurance (Director) mailed Parker a request for a refund pursuant to N.J.S.A. 43:21-16(d), holding Parker liable to refund an overpayment in the amount of \$3,480 for benefits she received for the weeks ending July 13, 2019, through September 28, 2019.

On December 31, 2019, Parker appealed both determinations to the Tribunal. After a phone hearing on January 28, 2020, in which Parker participated, the Tribunal mailed a decision on March 18, 2020, modifying the

determinations of the Deputy and the Director.¹ In its written decision, the Tribunal found that Parker was "ineligible for benefits from [August 21, 2019,] through [January 25, 2020,]" because "she was unable to work" and "from [August 18, 2019,] through [August 20, 2019,]" because "there were less than seven . . . eligible days during that calendar week." See N.J.S.A. 43:21-4(c)(1) and -19(q).

However, the Tribunal found Parker eligible "for benefits from [July 7, 2019,] through [August 17, 2019,]" because "she was able to work, available for work, and . . . demonstrated [that she was] . . . actively seeking work in accordance with N.J.S.A. 43:21-4(c)(1)." In rendering its decision, the Tribunal credited Parker's testimony recounting her efforts to find work despite various medical issues and accepted her supporting medical documentation as undisputed. As a result, the Tribunal modified the Director's determination and reduced Parker's liability for a refund to "\$1,740[, received as benefits for the weeks ending [August 24, 2019,] through [September 28, 2019]."

¹ The Tribunal's decision was originally mailed on January 30, 2020. The later mailing is not explained in the record but the March 18, 2020, mailing date is used for purposes of the appeal.

The Tribunal's decision included a notice setting forth the procedure to appeal to the Board and the timeframe for taking such an appeal. In pertinent part, the notice stated:

IMPORTANT: This decision will become final, unless, within twenty (20) days of the date of mailing or notification, a written appeal is filed with the Board of Review The appeal period will be extended if good cause for late filing is shown. Good cause exists in situations where it can be shown that the delay was due to circumstances beyond the control of the appellant, which could not have been reasonably foreseen or prevented. . . .

On February 5, 2022, almost two years after the Tribunal mailed its decision, Parker appealed the decision to the Board. On March 9, 2022, the Board dismissed Parker's appeal as untimely, pursuant to N.J.S.A. 43:21-6(c), finding no showing of good cause "for such late filing." The Board thus affirmed the Tribunal's decision. This appeal followed.

On appeal, Parker asserts that from "March through May [2020]," she made "numerous attempts" to file an appeal but was unable to do so because "the Department of Labor . . . had shut down due to the COVID-19 outbreak." According to Parker, the Department of Labor "posted that they would reopen during . . . 2020 through 2021" but "did not do so until sometime between the month of March/June of 2022."

The scope of our review of an administrative agency's final decision is "limited." Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997); see also Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) ("Judicial review of agency determinations is limited."). We will disturb an agency's decision

only if we determine that the decision is "arbitrary, capricious or unreasonable" or is unsupported "by substantial credible evidence in the record as a whole." In determining whether an agency action is arbitrary, capricious, or unreasonable, we examine:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Berta v. N.J. State Parole Bd., 473 N.J. Super. 284, 302 (App. Div. 2022) (citations omitted) (first quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); and then quoting In re Carter, 191 N.J. 474, 482-83 (2007)).]

The party challenging the administrative action bears the burden of making the requisite showing. Lavezzi v. State, 219 N.J. 163, 171 (2014).

Although we "must defer to an agency's expertise and superior knowledge of a particular field," In re Carter, 191 N.J. at 483 (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)), we are "in no way bound by [an] agency's interpretation of a statute or its determination of a strictly legal issue." Allstars Auto. Grp., Inc., 234 N.J. at 158 (alteration in original) (quoting Dep't of Children & Families, DYFS v. T.B., 207 N.J. 294, 302 (2011)).

Pursuant to N.J.S.A. 43:21-6(c), a decision by the Tribunal "shall be deemed to be the final decision of the [Board], unless further appeal is initiated pursuant to [N.J.S.A. 43:21-6(e)] . . . within [twenty] days after the date of notification or mailing of such decision." Late appeals may only be considered on the merits "if it is determined that the appeal was delayed for good cause." N.J.A.C. 12:20-4.1(h). "Good cause" exists where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or
2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

[N.J.A.C. 12:20-4.1(h).]

Here, the Board properly dismissed the appeal because it was not filed within the time limit set forth in N.J.S.A. 43:21-6(c), and Parker failed to demonstrate good cause for the late filing. The Tribunal's decision, which was

mailed to Parker on March 18, 2020, clearly indicated that the deadline to appeal to the Board was within twenty days of the mailing, or April 7, 2020, unless good cause for a late filing was shown. The decision defined good cause as situations where the delay was due to circumstances beyond the control of the claimant, which could not have been reasonably foreseen or prevented. Parker did not appeal until February 5, 2022, almost two years after the deadline had passed.

In her merits brief, Parker asserts that from "March through May [2020]," she made "numerous attempts" to file an appeal but was unable to do so because "the Department of Labor . . . had shut down due to the COVID-19 outbreak" and did not reopen "until sometime between the month of March/June of 2022." However, Parker did not provide these purported reasons for the delay to the Board when she filed her appeal from the Tribunal's decision, and her February 5, 2022, filing contradicts her assertion that the Department of Labor did not reopen until March or June, 2022. Although the unanticipated shutdowns caused by the COVID-19 pandemic would have certainly qualified as good cause for a late filing, the record on appeal "restricts the parties to issues raised below and the record created before the agency." J.K. v. N.J. State Parole Bd., 247 N.J. 120, 124 (2021).

"In reviewing the factual findings made in an unemployment compensation proceeding, the test is not whether an appellate court would come to the same conclusion if the original determination was its to make, but rather whether the factfinder could reasonably so conclude upon the proofs." Charatan v. Board of Review, 200 N.J.Super. 74, 79 (App.Div.1985). Because the Board's findings that Parker did not timely file an appeal from the Tribunal's decision and failed to show good cause for the untimeliness of her submission were supported by the record and applicable law, we are constrained to affirm.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION