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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-2796-21**

D.B.,¹

Appellant,

v.

**BOARD OF REVIEW,
DEPARTMENT OF LABOR,
and APPLE,**

Respondents.

Submitted June 7, 2023 – Decided June 21, 2023

Before Judges Gooden Brown and Mitterhoff.

On appeal from the Board of Review, Department of Labor, Docket No. 251473.

David M. Chandler (Baik Law Firm, PC), attorney for appellant.

Matthew J. Platkin, Attorney General, attorney for respondent Board of Review (Donna Arons, Assistant

¹ We use initials to protect appellant's privacy interests because we reference appellant's mental health history.

Attorney General, of counsel; Bryce K. Hurst, Deputy Attorney General, on the brief).

PER CURIAM

Appellant D.B. appeals from the Board of Review's March 30, 2022 decision, which held her liable to refund the sum of \$6,210 received as benefits for the weeks ending September 26, 2020 through March 27, 2021, in accordance with N.J.S.A. 43:21-16(d). We affirm.

We discern the following facts from the record. Appellant was employed as a seasonal worker with Apple, Inc. from November 2019 through December 2019 when she voluntarily resigned due to personal medical issues unrelated to the job. Appellant has not worked in any capacity since December of 2019.

On September 20, 2020, appellant filed a claim for Pandemic Unemployment Assistance ("PUA") benefits and received benefits for the weeks ending September 26, 2020 through March 27, 2021 at a weekly benefit rate of \$230, totaling \$6,210. On April 8, 2021, however, the Deputy for the Director of the Division of Unemployment Insurance (the "Deputy") issued a re-determination, holding appellant ineligible for PUA benefits from September 20, 2020 "on the ground that she was not unemployed or unavailable/unable to work due to a qualifying reason" under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), 15 U.S.C. §§ 9001 to 9141. Accordingly,

the Deputy also issued a request for refund, holding appellant liable to refund the sum of \$6,210 received as benefits for the weeks ending September 26, 2020 through March 27, 2021, pursuant to N.J.S.A. 43:21-16(d).

On April 26, 2021, appellant appealed the Deputy's re-determination and request for refund. On June 8, 2021, appellant subsequently participated in a telephonic hearing with the Appeal Tribunal (the "Tribunal"). At the hearing, appellant testified that she voluntarily resigned from her seasonal position in December 2019 due to "[p]ersonal circumstances and [her] mental illness," which she acknowledged was "three months before the pandemic actually hit." Appellant further acknowledged that she has not worked since leaving her position in December 2019.

On June 9, 2021, the Tribunal issued a decision affirming the Deputy's re-determination. Specifically, the Tribunal found that appellant was "not unemployed due to a COVID-19 related reason," as identified by the CARES Act, and was, thus, "ineligible for PUA benefits" from September 20, 2020.² As such, appellant was found liable to refund the sum of PUA benefits already received, which totaled \$6,210.

² The Tribunal further found that appellant's "separation of employment was strictly based upon her medical issues, which were not aggravated, or initiated, by the working conditions."

On August 11, 2021, appellant appealed the Tribunal's decision to the Board of Review (the "Board"). In support of her appeal, appellant's counsel submitted a statement containing the following arguments:

1. [Appellant] should not be required to pay back \$6,210[] in benefits. The State awarded her benefits in good faith. [Appellant] did not commit fraud or use any unlawful means to obtain benefits. If there was a mistake, it was the State's mistake, and [appellant] should not be held liable for the payments.

2. Prior to the pandemic, [appellant] had been offered a position as a secretary at her aunt's law firm . . . , but she could not take it because the firm closed due to C[OVID]-19.

[3]. One of the requirements for receiving benefits is that the [c]laimant's place of work had closed. [Appellant] could not go back to work [for] her former employer because it had closed due to the pandemic.

On March 30, 2022, the Board affirmed the Tribunal's decision.³ This appeal followed. On appeal, appellant raises the same arguments that her counsel unsuccessfully presented to the Board.

³ Additionally, the Board stated, "if [appellant] was offered out-of-state work that was rescinded due to the COVID-19 pandemic, [appellant] should file a PUA claim in that state."

We find insufficient merit in appellant's arguments to warrant extended discussion in a written opinion. Rule 2:11-3(e)(1)(E). We add only the following brief comments.

Judicial review of administrative actions is "severely limited." Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995). It is not the function of the reviewing court to substitute its own judgment for that of the administrative agency, "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)). Thus, "[a]n administrative agency's final quasi-judicial 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." In re Herrmann, 192 N.J. 19, 27-28 (2007). The party challenging the administrative action bears the burden of making that showing. Lavezzi v. State, 219 N.J. 163, 171 (2014).

In addition, "we are required to defer to an agency's technical expertise, its superior knowledge of its subject matter area, and its fact-finding role," and, therefore, are "obliged to accept all factual findings that are supported by sufficient credible evidence." Futterman v. Bd. of Review, Dep't of Labor, 421 N.J. Super. 281, 287 (App. Div. 2011) (quoting Messick v. Bd. of Rev., 420 N.J.

Super. 321, 325 (App. Div. 2011)). Although we are not bound by an agency's interpretation of law, we also accord a degree of deference when the agency interprets a statute or a regulation that falls "within its implementing and enforcing responsibility[.]" Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001) (quoting In re Appeal by Progressive Cas. Ins. Co., 307 N.J. Super. 93, 102 (App. Div. 1997)).

Under the CARES Act (the "Act"), an individual may receive PUA benefits if he or she meets certain statutory requirements. See 15 U.S.C. § 9021. For purposes of PUA eligibility, the Act defines a "covered individual" as one who is "not eligible for regular compensation or extended benefits under State or Federal law" and provides self-certification that they are "otherwise able to work and available for work . . . , except the individual is unemployed, partially employed or unable or unavailable to work" due to one of the following requirements:

(aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID-19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency;
or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section[.]

[15 U.S.C. § 9021(a)(3)(A)(i), (ii)(I).]

The Department of Labor promulgated regulations to implement the Act. See N.J.A.C. 12:17-12.8. Thus, in order to qualify for PUA benefits in New Jersey, an individual must—at a minimum: (1) be unemployed, partially unemployed, or unable or unavailable to work; and (2) meet one of the qualifying reasons under the statute and associated regulations. See 15 U.S.C. § 9021(a)(3)(A); N.J.A.C. 12:17-12.8(a)(4).

Here, we agree with the Board's determination that appellant was ineligible for PUA benefits from September 20, 2020 through June 5, 2021 as she was not unemployed due to any of the qualifying reasons under the Act or associated regulations. In fact, it is uncontroverted that appellant voluntarily resigned from her job at least three months prior to the onset of the COVID-19 public health emergency. Therefore, we are satisfied that the Board's decision to hold appellant liable to refund the total amount of PUA benefits that she received was not arbitrary, capricious, or unreasonable.

Finally, in circumstances such as these, repayment is required even when the benefits were received in good faith. Fischer v. Bd. of Review, 123 N.J. Super. 263, 266 (App. Div. 1973). Thus, the Department "is not estopped from demanding the refund." Ibid.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION