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APPROVAL OF THE APPELLATE DIVISION**

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-3295-20

KIMBERLIE CHARLES,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR,
and FIVE STAR CARE, LLC.,

Respondents.

Submitted December 19, 2022 – Decided February 15, 2023

Before Judges Smith and Marczyk.

On appeal from the Board of Review, Department of Labor, Docket No. 216,112.

Kimberlie Charles, appellant pro se.

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

Respondent Five Star Care, LLC did not file a brief.

PER CURIAM

Petitioner Kimberlie Charles was employed by Five Star Care, LLC (Five Star) as a certified nursing assistant from November 2017 through June 10, 2019. Petitioner left work for various personal reasons, including that her vehicle was impounded, she lost her childcare, and she was pregnant. She filed for unemployment benefits on June 30, 2019. On July 31, 2019, the Deputy initially determined petitioner was ineligible for unemployment benefits as of June 9, 2019, because she voluntarily left employment without good cause attributable to the work. Petitioner did not appeal this initial determination.

Under N.J.S.A. 43:21-5, the initial unemployment benefit determination imposed a statutory disqualification for benefits until petitioner became reemployed and met other criteria. Petitioner next applied for Disability Benefits During Unemployment. However, on March 19, 2020, the Division made an initial determination that petitioner was ineligible for Disability Benefits During Unemployment, citing the previous initial determination. Petitioner appealed the second denial, and she testified at an Appeal Tribunal on July 16, 2020. No other witnesses testified.

At the hearing petitioner testified that she worked over forty hours a week for Five Star, before she stopped working. She testified while Five Star provided

flexible hours and shifts for employees based on availability, she began receiving fewer cases in May and June of 2019. During this time petitioner testified she informed Five Star she had transportation and childcare issues, but never told them she quit. She testified she continued to seek shift work with the company.

Petitioner testified she became pregnant around this time and was medically restricted from lifting over twenty pounds. Petitioner explained this to Five Star and sought cases where she could be a one-on-one companion, but the company was unable to provide such opportunities. Petitioner testified that after she last worked with Five Star, that she did not work again through the date of her hearing testimony, spending her days caring for her children and getting physical therapy for a nerve condition in her back and leg. Petitioner stated that she did not appeal the July 31, 2019, initial determination of ineligibility for unemployment benefits because she was overwhelmed and in the process of relocating to a homeless shelter during that time.

On July 20, 2020, the Appeal Tribunal issued an initial decision, finding petitioner disqualified from receiving Disability Benefits During Unemployment. It based its decision on the ground that the July 31, 2019, initial determination that petitioner was ineligible for unemployment benefits remained

in effect, including its finding that petitioner left work voluntarily without good cause effective June 9, 2019. This finding in turn rendered petitioner disqualified from subsequent benefits pursuant to N.J.S.A. 43:21-5, because she had not earned ten times the weekly benefit in eight weeks of employment in order to remove the disqualification. Petitioner appealed to the Board of Review, which affirmed the Appeal Tribunal in a final decision. This appeal follows.¹ On appeal, petitioner argues that she was wrongfully denied disability benefits during unemployment.

The scope of our review of the Board's decision is limited. Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018). A final decision of an administrative agency should not be disturbed unless it is arbitrary, capricious, or unreasonable. Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997). The party challenging an administrative action bears the burden of demonstrating that the decision was arbitrary, capricious, or unreasonable. Lavezzi v. State, 219 N.J. 163, 171 (2014) (quoting In re J.S., 431 N.J. Super. 321, 329 (App. Div. 2013)).

In the specific context of unemployment benefits, reviewing courts generally construe New Jersey's Unemployment Compensation Law "liberally

¹ Petitioner is pro se on appeal.

in favor of [the] allowance of benefits." Lord v. Bd. of Rev., 425 N.J. Super. 187, 195 (App. Div. 2012) (quoting Utley v. Bd. of Rev., 194 N.J. 534, 543 (2008)). However, the law is specifically meant for "protection against the hazards of economic insecurity due to involuntary unemployment." Yardville Supply Co. v. Bd. of Rev., 114 N.J. 371, 374 (1989) (citing N.J.S.A. 43:21-2). Therefore, if "an employee leaves work voluntarily, he [or she] bears the burden to prove he [or she] did so with good cause attributable to work." Brady, 152 N.J. at 218.

Petitioner argues that the Board was arbitrary, capricious and unreasonable because she was "wrongfully denied [benefits] without proper investigation or proof." We find the Board did not err and offer the following brief comments. Much of petitioner's testimony at the tribunal went to the combination of unfortunate personal circumstances surrounding her loss of employment with Five Star. This testimony was relevant to her original application for unemployment benefits, an application that was denied in an initial determination on July 31, 2019. Petitioner never filed an appeal of the denial of the initial application for unemployment benefits, timely or otherwise. Petitioner instead elected to file a separate application for Disability Benefits During Unemployment.

N.J.S.A. 43:21-5, Disqualification for Benefits, reads in pertinent part:

An individual shall be disqualified for benefits:

(a)For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works eight weeks in employment, which may include employment for the federal government, and has earned in employment at least ten times the individual's weekly benefit rate, as determined in each case.

[N.J.S.A. 43:21-5(a).]

The Board correctly found that petitioner had not met the statutory criteria necessary to surmount disqualification for Disability Benefits During Unemployment. The finding that she left work voluntarily without good cause attributable to the work remained in place, unchallenged. Properly interpreting the statute, the Board concluded petitioner had to show eight weeks of reemployment, with earnings "at least ten times the individual's weekly benefit rate," which in this case the Board found to be \$359. The record shows, in petitioner's own words, that she was not reemployed after she left Five Star. We conclude the Board had substantial credible evidence in the record to support its final decision denying Disability Benefits During Unemployment.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION