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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-0097-23**

DEMETRIS ARRINGTON,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR,
and STATE OF NEW JERSEY
DEPARTMENT OF CHILDREN
& FAMILIES,

Respondents.

Submitted June 18, 2024 – Decided June 27, 2024

Before Judges Currier and Mawla.

On appeal from the Board of Review, Department of
Labor, Docket No. 261901.

Demetris Arrington, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for
respondent Board of Review, Department of Labor
(Janet Greenberg Cohen, Assistant Attorney General,
of counsel; Bryce K. Hurst, Deputy Attorney General,
on the brief).

PER CURIAM

Appellant Demetris Arrington appeals from a July 26, 2023 final agency decision by the Board of Review, Department of Labor (the Board), dismissing her appeal of a September 20, 2021 decision by an appeal tribunal. We affirm.

Appellant filed for unemployment benefits on May 10, 2020. On May 26, 2021, the Deputy Director of the Division of Unemployment Insurance issued a redetermination, imposing a period of ineligibility between May 10, 2020 and June 27, 2020, because appellant was employed full-time. As a result, appellant was liable to refund \$4,598 of unemployment benefits paid to her.

Appellant filed an appeal from the redetermination on June 22, 2021. On September 20, 2021, the appeal tribunal conducted a hearing. Appellant testified she received the redetermination on June 3, 2021. When the examiner asked appellant why she waited until June 22, 2021 to appeal, she responded as follows: "I'm not sure. . . . I don't know. I think [it] . . . was [due to] a delay of mail around that time."

The appeal tribunal found appellant did not file within the time required by N.J.S.A. 43:21-6(b)(1). It found although appellant "tried to adhere to the time constraints, her appeal was filed late, and good cause has not been shown."

The tribunal concluded it lacked jurisdiction to reach the merits of the appeal and dismissed the matter. Notably, the decision contained the following notice:

IMPORTANT: This decision will become final, unless, within twenty . . . days of the date of mailing or notification, a written appeal is filed with the Board 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 March 11, 2022, appellant filed an appeal of the tribunal's September 20, 2021 decision. The Board concluded the appeal was filed late, because pursuant to N.J.S.A. 43:21-6(c) "it was filed subsequent to the expiration of the statutory period of twenty days from the date of mailing of the . . . [t]ribunal decision" and appellant had not shown good cause for the late filing. The Board dismissed the appeal.

Appellant argues we should reverse and remand her case for reconsideration because she received the mail late due to delays caused by the COVID-19 pandemic and its related restrictions on travel. She claims she attempted to file her appeal by mail and online. Appellant also addresses the merits of her matter and argues she applied for unemployment because she was

unaware there was a separate application process for pandemic unemployment assistance.

Appellate review of final administrative agency decisions is limited. Kadonsky v. Lee, 452 N.J. Super. 198, 201-02 (App. Div. 2017). "[I]n 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." Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997) (quoting Charatan v. Bd. of Rev., 200 N.J. Super. 74, 79 (App. Div. 1985)). "If the Board's factual findings are supported 'by sufficient credible evidence, courts are obliged to accept them.'" Id. at 210 (quoting Self v. Bd. of Rev., 91 N.J. 453, 459 (1982)).

Unless "the agency's action was arbitrary, capricious, or unreasonable, the agency's ruling should not be disturbed." Brady, 152 N.J. at 210. In this regard, we consider whether: the agency has violated legislative policies and if it followed the law; substantial evidence exists in the record to support the agency findings; and the agency applied the law in a manner whereby it reached "a conclusion that could not reasonably have been made on a showing of the relevant factors." Trantino v. N.J. State Parole Bd., 154 N.J. 19, 24 (1998).

At the time appellant filed her appeal to the tribunal, N.J.S.A. 43:21-6(b)(1) required that an appeal be filed within ten days of the mailing of the redetermination or within seven days of the receipt of the redetermination.¹ Pursuant to N.J.S.A. 43:21-6(c), appellant had to file her appeal from the tribunal's decision "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 the delay "was due to circumstances beyond the [appellant's] control" or where the "delayed filing . . . [was] for circumstances which could not have been reasonably foreseen or prevented." N.J.A.C. 12:20-4.1(h).

Pursuant to these principles, we conclude both the tribunal and the Board properly found appellant did not file her appeals in a timely manner. Appellant conceded she received the redetermination decision with enough time to file her appeal within the time-period required by N.J.S.A. 43:21-6(b)(1). Therefore, her claims regarding the delayed receipt of mail had no bearing on, and did not explain why she waited until June 22, 2021, to appeal the redetermination.

¹ On November 3, 2022, N.J.S.A. 43:21-6(b)(1) was amended effective as of July 31, 2023, to expand the time for appeal to "within [twenty-one] days after the notification was mailed to the claimant's last-known address."

Regarding the appeal to the Board, it was filed on March 11, 2022, despite the fact the tribunal's decision was mailed to her on September 20, 2021. This was well beyond the time-period set forth in N.J.S.A. 43:21-6(c). Her claim that the receipt of mail was delayed due to the pandemic is unsupported by either objective evidence or the record.

Appellant has not demonstrated the requisite good cause to overcome the dismissal of her appeals. The tribunal and the Board's decisions were not arbitrary, capricious, or unreasonable, and were supported by the evidence in the record. For these reasons, we do not reach the merits raised by appellant on appeal.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION