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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-1751-22**

MARISA LIONE,

Appellant,

v.

BOARD OF REVIEW,  
DEPARTMENT OF LABOR, and  
HUDSON MILESTONES, INC.,

Respondents.

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Submitted May 28, 2024 – Decided June 14, 2024

Before Judges Sabatino and Marczyk.

On appeal from the Board of Review, Department of Labor, Docket No. 270190.

Marisa Lione, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent Board of Review (Janet Greenberg Cohen, Assistant Attorney General, of counsel; Elizabeth A. Davies, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner Marisa Lione appeals pro se from the January 11, 2023 final decision of the Board of Review upholding a decision by the Appeal Tribunal which denied her appeal as untimely under N.J.S.A. 43:21-6(b)(1). Based on our review of the record and the applicable legal principles, we vacate and remand for further proceedings.

I.

Petitioner was employed at Hudson Milestones, Inc., as the Director of Programs for fourteen years. She resigned on March 19, 2021. She filed a claim for unemployment benefits on April 4, 2021. On October 4, 2021, the Deputy Director of the Division of Unemployment and Disability Insurance mailed a redetermination letter imposing a disqualification for benefits on the ground she left work voluntarily without good cause attributable to such work. On October 4, 2021, the Deputy Director also mailed a request for refund, finding petitioner was liable for a refund in the amount of \$7,310 for the benefits she received for the weeks ending on April 10, 2021 through June 12, 2021, pursuant to N.J.S.A. 43:21-16(d).

Petitioner filed an online appeal on October 21, 2021. At the hearing before the Appeal Tribunal, petitioner acknowledged she received the notice of determination from the Deputy Director on October 11, 2021. She further

testified that upon receipt she reviewed it and believed she had more time than she did. When asked if there was anything that would have delayed her filing the appeal earlier, she responded, "[n]o, just like I said, either missing the information or, you know, I thought I read it correctly, but I didn't."

Following a hearing, the Appeal Tribunal noted petitioner "could not provide a reason as to why the appeal was not filed earlier; she read the notice of determination in its entirety and no specific event prevented her from filing the appeal timely." The Appeal Tribunal determined that petitioner's appeal—filed on October 21, 2021—was not filed within the time period set forth in N.J.S.A. 43:21-6(b)(1), and good cause had not been shown for the late filing. Accordingly, it concluded it lacked jurisdiction to consider the merits of the appeal, which was dismissed.

Thereafter, petitioner filed a timely appeal to the Board of Review. On January 11, 2023, the Board of Review affirmed the decision of the Appeal Tribunal, also concluding petitioner did not file the appeal in a timely manner under N.J.S.A. 43:21-6(b)(1). It further noted she did not demonstrate good cause to extend the time for filing under N.J.A.C. 12:20-3.1(i). This appeal followed.

## II.

Before us, petitioner contends she was "under duress" after receiving the letter from the Deputy Director, which ordered her to repay in excess of \$7,000, and she was "confused with the dates of the mailing of the letter." She further asserts the "extreme stress" of leaving her employment after fourteen years most of which "were both happy and fulfilling" after being threatened with termination, impacted her "ability to respond [within the] time frames requested by the Department of Labor." She notes she used the unemployment benefits for less than three months prior to securing a new job. She also notes she had never used unemployment benefits in the past. She attributes her misunderstanding of the deadline set forth in the letter as being the result of post-traumatic stress from being forced to leave her job against the backdrop of the COVID-19 pandemic.

"We review a decision made by an administrative agency entrusted to apply and enforce a statutory scheme under an enhanced deferential standard." E. Bay Drywall, LLC v. Dep't of Lab. & Workforce Dev., 251 N.J. 477, 493 (2022). Accordingly, "we will disturb an agency's adjudicatory decision only upon a finding that the decision is 'arbitrary, capricious or unreasonable,' or is unsupported 'by substantial credible evidence in the record as a whole.'" Sullivan v. Bd. of Rev., Dep't of Lab., 471 N.J. Super. 147, 155-56 (App. Div.

2022) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). In making that determination, we "must examine: '(1) whether the agency's decision conforms with relevant law; (2) whether the decision is supported by substantial credible evidence in the record; and (3) whether, in applying the law to the facts, the administrative agency clearly erred in reaching its conclusion.'" In re Y.L., 437 N.J. Super 409, 412 (App. Div. 2014) (quoting Twp. Pharmacy v. Div. of Med. Assistance & Health Servs., 432 N.J. Super. 273, 283-84 (App. Div. 2013)). "The burden of proving that an agency action is arbitrary, capricious, or unreasonable is on the challenger." Parsells v. Bd. of Educ., 472 N.J. Super. 369, 376 (App. Div. 2022).

If an individual receives unemployment benefits but was not entitled to those benefits, the New Jersey Unemployment Compensation Law requires repayment of the unemployment benefits. N.J.S.A. 43:21-16(d); Bannan v. Bd. of Review, 299 N.J. Super. 671, 674 (App. Div. 1997). During the relevant time frame in this case, the time for filing an appeal from a demand for repayment of benefits was governed by N.J.S.A. 43:21-6(b)(1) (Oct. 2017), which provided that unless the claimant filed an appeal "within seven calendar days after delivery of notification of an initial determination or within [ten] calendar days after such notification was mailed . . . such decision shall be final . . . ." Our

Supreme Court has recognized a "good cause" exception to the statutory deadline under certain circumstances. See Rivera v. Bd. of Review, 127 N.J. 578, 590 (1992). Consequently, the Department of Labor and Workforce Development adopted a regulation implementing the "good cause" exception articulated in Rivera. See N.J.A.C. 12:20-3.1(i).

N.J.A.C. 12:20-3.1(i) provides:

A late appeal shall be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause exists in circumstances 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.

It is undisputed petitioner received notice of the Deputy Director's redetermination letter on October 11, 2021. Although it was mailed on October 4, 2021, under N.J.S.A. 43:21-6(b)(1) (Oct. 2017), she was required to file her appeal within seven days after delivery of the notification. Accordingly, her appeal was due on October 18, 2021, but it filed three days later on October 21, 2021.

We are unpersuaded by the Board of Review's contention in its brief that petitioner's appeal was filed "well past the filing deadline," given the appeal was a mere three days late. Faced with the prospect of paying back over \$7,000, being confused about the abbreviated time frame<sup>1</sup> in which to file an appeal with the Appeal Tribunal, the "extreme stress" of leaving her employment during the COVID-19 pandemic, coupled with the inconsequential three-day delay in filing her appeal, we are satisfied petitioner has demonstrated good cause warranting the Appeal Tribunal to consider her appeal on the merits. In other contexts, we have noted that "justice require[s] [an] adjudication[] on the merits to the greatest extent possible." See State v. Farrell, 320 N.J. Super. 425, 447 (App. Div. 1999); see also Midland Funding LLC v. Albern, 433 N.J. Super. 494, 496 (App. Div. 2013) (noting the longstanding policy of "favoring the disposition of cases on their merits").

We vacate and remand this matter for further proceedings consistent with this opinion. We intimate no views on the merits of petitioner's arguments on remand.

Vacated and remanded. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION

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<sup>1</sup> N.J.S.A. 43:21-6 and -16 were amended after the Board issued its decision. See L. 2022, c. 120. Among other things, N.J.S.A. 43:21-6 was amended to increase the time for filing an appeal from ten to twenty-one days.