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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-2889-22**

SUZANNE E. GARCIA,

Appellant,

v.

**BOARD OF REVIEW,
DEPARTMENT OF LABOR,
MARLBORO TOWNSHIP BOARD
OF EDUCATION, and COMPASS
2K12 SERVICES, LLC,**

Respondents.

Submitted May 28, 2024 — Decided June 12, 2024

Before Judges Sabatino and Chase.

On appeal from the Board of Review, Department of Labor, Docket No. 279977.

Suzanne E. Garcia, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent Board of Review (Sara M. Gregory, Assistant Attorney General, of counsel; Kevin K.O. Sangster, Deputy Attorney General, on the brief).

PER CURIAM

Appellant Suzanne Garcia appeals from a May 18, 2023 Board of Review final agency decision determining her to have been ineligible for certain unemployment benefits she received and ordering her to refund to the Division of Unemployment Insurance the sum of \$5,421 in overpaid benefits.

In 2020, appellant worked as a bus driver for the Marlboro Township Board of Education and also in a separate job, as a food service worker for Compass 2K12 Services, LLC. On March 13, 2020, appellant was temporarily laid off from her food services job when the schools closed due to the COVID-19 pandemic. Appellant continued to work as a bus driver during the weeks at issue.

On March 15, 2020, appellant filed a claim for regular unemployment benefits qualifying for an allowed weekly benefit rate of \$417 or an allowed partial weekly benefit rate of \$500. The Division granted the claim and appellant received a weekly \$417 unemployment benefit for the weeks ending April 4, 2020 through June 27, 2020.

During each of those weeks, appellant had to answer several questions included in the agency's online claim submission system, including whether she had worked and earned any money that week. According to appellant, she

answered "no" because she believed the question was asking about her job with Compass. As appellant continued to work for Marlboro Township, however, she continued to earn approximately \$587 each week, which she did not report on the required weekly filing.

The Division became aware that appellant had not reported these earnings and that her earnings exceeded appellant's partial weekly benefit. On November 23, 2021, appellant received a Request for Refund from the Division Director advising her of the Division's determination that she had been overpaid for the relevant weeks and of her obligation to refund a total of \$5,421 for that overpayment. The notice denoted the determination as an "employed with earnings non-fraud refund."

Appellant challenged the Division's refund request. The Appeal Tribunal conducted a telephone hearing at which appellant testified. Appellant testified that she "believe[d]" the online submission had the question of whether she worked in a particular week but "then it was supposed to have a [d]ropbox [meaning a "drop-down" menu] [a]nd it didn't have the [d]ropbox where I could say that, yes, I worked for Marlboro or I didn't work for Compass." The Tribunal Examiner informed appellant that she should have answered "yes" and then the option would have appeared in the drop-down box. The Examiner further

informed appellant that her submission "would then not have generated any payment."

Following the hearing, the Tribunal issued a decision affirming the Division's determination that appellant had failed to report her receipt of earnings for the weeks ending April 4, 2020 through June 27, 2020, and thus received benefit payments exceeding her allowed partial benefit rate on the claim. The Tribunal thus found appellant was liable for a refund in the amount of \$5,421 in accordance with N.J.S.A. 43:21-16(d).

Appellant appealed from the Tribunal's determination. In its final agency decision, the Board of Review first found that "[s]ince the appellant was given a full and impartial hearing and a complete opportunity to offer any and all evidence, there [wa]s no valid ground for a further hearing." The Board found appellant's "contention that she was entitled to benefits during the [relevant] period . . . [wa]s without merit since her earnings exceeded her partial benefit rate on the claim dated March 15, 2020." The overpayment of benefits occurred, the Board noted, "when the claimant failed to enter her earnings with employer

#1,¹ as required when claiming benefits." Appellant appeals from the Board's final decision.

Our scope of review is limited. In matters involving unemployment benefits, we accord particular deference to the expertise of the Board, and its repeated construction and application of Title 43. See, e.g., Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997). "In reviewing the factual findings made in an unemployment compensation proceeding, the test is not whether [we] would come to the same conclusion if the original determination was [ours] to make, but rather whether the factfinder could reasonably so conclude upon the proofs." Ibid. (quoting Charatan v. Bd. of Review, 200 N.J. Super. 74, 79 (App. Div. 1985)). "If the Board's factual findings are supported 'by sufficient credible evidence, [we] are obliged to accept them.'" Ibid. (quoting Self v. Bd. of Rev., 91 N.J. 453, 459 (1982); Goodman v. London Metals Exch., Inc., 86 N.J. 19, 28-29 (1981) (same)). Unless an "agency's action was arbitrary, capricious, or unreasonable, the agency's ruling should not be disturbed." Ibid. (citing In re Warren, 117 N.J. 295, 296 (1989)); see also Sullivan v. Bd. of Rev., Dep't of Lab., 471 N.J. Super. 147, 155-56 (App. Div. 2022).

¹ By "employer #1," the Board was referring to the Marlboro Township Board of Education.

Applying these principles, we affirm the Board's determination of appellant's ineligibility for benefits for the weeks in question. The relevant unemployment benefit eligibility regulation, N.J.A.C. 12:17-8.5, provides that "[a]n individual's eligibility for weekly benefits shall be reduced by an amount equal to any wages or remuneration . . . received in excess of 20 percent of the individual's weekly benefit rate." Here, it is undisputed that appellant earned part-time income as a school bus driver "in excess of 20 percent" of her allowed weekly benefit rate of \$417 and above what her allowed \$500 partial benefit would have been for the weeks in question. Appellant presents no legal authority or factual proof to the contrary. The agency is obligated to apply the law, including the pertinent regulations.

The statute providing for the Division's recovery of benefits paid to an individual not entitled to them provides that:

[w]hen it is determined by a representative or representatives designated by the Director of the Division . . . that any person, whether (i) by reason of the nondisclosure or misrepresentation by him or by another of a material fact (whether or not such nondisclosure or misrepresentation was known or fraudulent), or (ii) for any other reason, has received any sum as benefits under this chapter . . . while any conditions for the receipt of benefits imposed by this chapter . . . were not fulfilled in his case, or while he was disqualified from receiving benefits, or while otherwise not entitled to receive such sum as benefits,

such person, unless the director (with the concurrence of the controller) directs otherwise by regulation, shall be liable to repay those benefits in full.

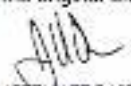
[N.J.S.A. 43:21-16(d)(1) (2014)².]

The statute requires the full repayment of unemployment benefits received by any person who was not actually entitled to those benefits. The obligation to repay is unaffected by the good faith of the claimant. Bannan v. Bd. of Rev., 299 N.J. Super. 671, 674 (App. Div. 1997); see also Fischer v. Bd. of Rev., 123 N.J. Super. 263, 266 (App. Div. 1973). We therefore affirm the agency's determination concerning the overpayment.

That said, we are mindful of appellant's assertion of financial hardship. We remand for the agency to consider whether appellant qualifies for a waiver pursuant to N.J.A.C. 12:17–14.2 and, alternatively, to consider whether a reasonable repayment plan is appropriate to mitigate the burden of recoupment on appellant. We express no views on the appropriate outcome on remand, and we do not retain jurisdiction.

Affirmed in part and remanded in part.

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



CLERK OF THE APPELLATE DIVISION

² This statute was amended effective July 2023, but the prior version was in effect at the time of appellant's administrative proceedings.