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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1475-19**

FRED M. BURG,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR, and
BROOKDALE COMMUNITY
COLLEGE,

Respondents.

Submitted February 28, 2022 – Decided May 19, 2022

Before Judges Messano and Enright.

On appeal from the Board of Review, Department of
Labor, Docket No. 184393.

Fred M. Burg, appellant pro se.

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

PER CURIAM

Appellant Fred M. Burg challenges the October 24, 2019 and February 10, 2021 final agency decisions of the Board of Review (Board) deeming him ineligible for benefits during the summer of 2019.¹ We affirm.

Burg has been a part-time adjunct professor at Brookdale Community College (BCC) since 2005. The courses he teaches are based on enrollment, so if there is insufficient enrollment for such courses, Burg is notified they are canceled.

During the spring of 2019, Burg taught two math courses. BCC asked him to teach two more courses during the fall 2019 term; Burg agreed and returned to teach that September.

Because BCC did not offer Burg the opportunity to teach during any of the three scheduled summer sessions in 2019, he filed for unemployment benefits for the period running from May 19 through September 7, 2019. In a determination mailed the following month, a Deputy Director found Burg was ineligible for benefits during this timeframe "on the ground . . . he was employed by an educational institution and had a reasonable assurance to

¹ As we discuss below, Burg failed to file an amended notice of appeal or brief to include the February 10 decision, notwithstanding our June 29, 2021 order to the contrary.

perform such services in a subsequent academic year or term,"² pursuant to N.J.S.A. 43:21-4(g)(1).³ Burg appealed from the denial, but his appeal was

² The regulations define "reasonable assurance" as

a written, oral, or other implied agreement that the employee shall perform services in any such capacity during the next academic year "Any such capacity" means the same or similar capacity and refers to the type of services provided, that is, a professional capacity as provided by N.J.S.A. 43:21-4(g)(1) or nonprofessional capacity as provided by N.J.S.A. 43:21-4(g)(2).

[N.J.A.C. 12:17-12.4(a)(1).]

³ N.J.S.A. 43:21-4(g)(1) provides that, with respect to teaching employees of

an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms[.]

dismissed under N.J.A.C. 1:12-14.4,⁴ after he failed to appear for the telephonic hearing or request an adjournment. Once Burg informed the Appeal Tribunal he missed notice of the hearing due to a preplanned vacation, the matter was reopened.

Burg testified at the rescheduled hearing in September 2019, contending he was entitled to unemployment benefits because he was not asked to teach during the summer sessions offered by BCC between May and August. Additionally, he argued the summer term did not constitute "a period between two successive academic years, or during a similar period between two regular terms" under N.J.S.A. 43:21-4(g)(1) because the "[s]ummer semester is not in between anything" and was "the same thing as the fall semester, same thing as the spring semester."

The Appeal Tribunal affirmed the Deputy Director's decision, relying on N.J.S.A. 43:21-4(g)(1) to find Burg was ineligible for benefits. The Appeal Tribunal found BCC's "summer sessions [were] not considered regular terms but rather abbreviated, condensed classes outside of the regular term" and that Burg

⁴ N.J.A.C. 1:12-14.4(a) provides "[i]f the appellant fails to appear for a hearing before an appeal tribunal, the appeal tribunal may proceed to make its decision on the record or may dismiss the appeal on the ground of nonappearance unless it appears that there is good cause for adjournment."

"returned to work with [BCC], working in the same capacity, for the fall semester[.]" It also concluded "[t]he potential for supplemental work teaching summer sessions does not exempt an individual from the between terms denial of benefits." Burg appealed, and the Board affirmed the Appeal Tribunal's decision on October 24, 2019.

Burg filed a notice of appeal and the Board moved before us for a remand. We granted the Board's motion but retained jurisdiction and ordered the proceedings to be completed within sixty days. The Board reopened the matter, set aside its October 24 decision, and remanded the case to the Appeal Tribunal for a new hearing and a new decision.

The Appeal Tribunal held additional hearings in October and November 2019. On November 6, the Appeal Tribunal again deemed Burg ineligible for unemployment benefits, highlighting that he received an offer to teach in the fall of 2019, after having taught during the preceding spring term. The Appeal Tribunal noted Burg

could not recall his exact work history or whether or not he was offered any specific courses for the summer sessions, which commenced in 05/2019. The sessions over the summer consisted of summer I ([six]-week session), summer II ([ten]-week session) and summer III ([six]-week session), [and] included breaks in between.

Further, the Appeal Tribunal acknowledged "the claimant submitted a series of documents as evidence to support his contention that the summer sessions are part of the regular 'academic' year, that they are not abbreviated sessions and they are not 'outside of the regular term.'" In response, the Appeal Tribunal again cited N.J.S.A. 43:21-4(g)(1) and found:

[T]he summer sessions are[,] in fact, condensed sessions that overlap one . . . another and they are not considered part of the regular academic year. Furthermore, there are three . . . scheduled breaks in between these sessions, collectively totaling five . . . weeks; thus, this time period cannot be considered part of the regular academic term and the claimant's contention is rejected.

The nature of adjunct employment is that course availability is customarily dependent on student enrollment and that course preference is given to full-time staff, therefore, there always exists the potential that an anticipated course may be canceled. However, in this case, the claimant returned to work with the above-named educational institution, working in the same capacity, for the fall semester; thus, he had a reasonable assurance of reemployment with an educational institution and he is not entitled to benefits during the period under review.

Burg appealed from this decision to the Board. But before the Board issued its final decision based on our remand, Burg attempted to revive his appeal from the October 24 final agency decision. He advised the Appellate Division case manager he no longer wished to pursue the remand proceedings

because he did not "see anything coming out of there different than what was issued from the Appeal Tribunal's hearing on the remand" and he had "no desire to file any revised papers at the [a]ppellate level as a result of the hearings at the Appeal Tribunal."

Consistent with our remand order, the Board fulfilled its obligations and rendered a decision on February 10, 2021. It affirmed the Appeal Tribunal's November 6 determination, finding Burg ineligible for unemployment benefits. The Board cited Weber-Smith v. Board of Review, 337 N.J. Super. 319 (App. Div. 2001), to highlight the Legislature's intent under N.J.S.A. 43:21-4 "to deny benefits between academic terms" for individuals employed by educational institutions. Although the Board acknowledged Burg was not employed twelve months, unlike the claimant in Weber-Smith, it concluded there was

no legislative intent to allow benefits between the spring and fall semesters to those who are not contracted to work [twelve] months and who have a reasonable assurance of reemployment which require[s] the individual to perform services in the same capacity during the ensuing academic term or year as in the first academic term or year.

Subsequently, the Board moved to dismiss Burg's appeal of the October 24 decision, arguing his appeal was moot due to its February 10 decision. We denied the Board's motion, but issued an order on June 29, 2021, directing Burg

to "file an amended notice of appeal and brief within thirty days[.]" He filed neither, despite acknowledging receipt of the June 29 order. Rather, in July 2021, he wrote to the case manager handling this matter, advising he was "perfectly satisfied to allow the Notice of Appeal and [b]rief appealing the Board['s] . . . 10/24/19 Order to stand as is" and had "no desire to amend these as allowed by the [c]ourt . . . , although [he did] appreciate the opportunity."

Burg raises the following contentions in his brief, which we set forth verbatim:

POINT 1: "BETWEEN TWO SUCCESSIVE
ACADEMIC YEARS/BETWEEN TWO REGULAR
TERMS"

POINT 2: REASONABLE ASSURANCE

In his reply brief, he further argues:

POINT 1: THE APPEAL IN A-1475-19T2 SHOULD
NOT BE DISMISSED

POINT 2: BOARD'S DECISION WAS
EGREGIOUSLY INCORRECT

Regarding the arguments raised in Burg's initial merits brief, we first observe it is not the role of this court to weave together the fabric of an argument on a party's behalf based on vague threads of information identified in the point headings required under Rule 2:6-2(a)(6). A "respondent . . . has a right to know

precisely what legal arguments are being made and . . . need not respond to oblique hints and assertions" made by an appellant. Almog v. Isr. Travel Advisory Serv., Inc., 298 N.J. Super. 145, 155 (App. Div. 1997).

Also, we generally do not address arguments raised for the first time in reply briefs. See Pannucci v. Edgewood Park Senior Hous. – Phase 1, LLC, 465 N.J. Super. 403, 409-10 (App. Div. 2020) (citing State v. Smith, 55 N.J. 476, 488 (1970) (noting impropriety of expanding on a main argument in a reply brief)). Moreover, our courts typically "do not resolve issues that have become moot due to the passage of time or intervening events." Wisniewski v Murphy, 454 N.J. Super. 508, 518 (App. Div. 2018) (quoting State v. Davila, 443 N.J. Super. 577, 584 (App. Div. 2016)).

Here, we are satisfied the Board sufficiently understood, and was able to respond to, the snippets of arguments identified in the point headings of Burg's merits brief, given the history of this matter. Accordingly, we address his arguments, but only to the extent they pertain to the Board's February 10 decision. In doing so, we indirectly dispose of the two untimely arguments raised in Burg's reply brief. However, we decline to review the Board's October 24 decision, agreeing with respondent that any appeal from that earlier decision

is now moot by virtue of the Board's February 10 decision. See Caput Mortuum, LLC v. S&S Crown Servs., Ltd., 366 N.J. Super. 323, 330 (App. Div. 2004).

We hasten to add that our willingness to consider Burg's arguments should not be construed as condoning his failure to amend his notice of appeal and brief as directed in our June 29 order. See W.H. Indus., Inc. v. Fundicao Balancins Ltd., 397 N.J. Super. 455, 458 (App. Div. 2008) (confirming it is only the orders designated in the notice of appeal that are subject to the appeal process and review) (citation omitted). But for the sake of completeness, and given that the Board's February 10 decision essentially mirrors the October 24 decision in terms of its analysis and result, we address the latter ruling.

Our review of an administrative agency decision 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)). 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)) .

We will affirm the Board's decision as long as it is supported by "sufficient credible evidence[.]" Brady, 152 N.J. at 210 (quoting Self v. Bd. of Rev., 91 N.J. 453, 459 (1982)). While we are "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue[.]" Ardan v. Bd. of Rev., 231 N.J. 589, 604 (2018) (quoting US Bank, N.A. v. Hough, 210 N.J. 187, 200 (2012)), we "defer to an agency's interpretation of both a statute and implementing regulation, within the sphere of the agency's authority, unless the interpretation is plainly unreasonable[.]" ibid., (quoting In re Election L. Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010)).

Here, we are convinced the credible evidence in the record sufficiently supports the Board's finding that Burg was ineligible for unemployment benefits under N.J.S.A. 43:21-4(g)(1), considering that after he taught two courses during the 2019 spring term at BCC, he received and accepted an offer to continue his employment relationship with the college in the fall of 2019. In fact, Burg was given reasonable assurance of reemployment, conditioned upon enrollment numbers. Additionally, we agree with the Board's finding that Burg had no expectation of employment during the summer months, unlike the

claimant in Weber-Smith, who was a twelve-month employee. We also perceive no basis to second-guess the Board's finding that BCC's multiple summer sessions consisted of "abbreviated, condensed classes outside the regular term."

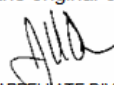
In sum, the Board's decision holding that appellant was ineligible for unemployment benefits pursuant to N.J.S.A. 43:21-4(g)(1) is supported by substantial, credible evidence in the record and accords with the express legislative intent to except from eligibility for unemployment compensation benefits those persons employed in education on less than a twelve-month basis. N.J.S.A. 43:21-4(g)(3). Measured under our standard of review, we discern no basis for intervention.

To the extent we have not addressed Burg's remaining contentions, we consider them to lack sufficient merit to warrant discussion in a written opinion.

R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION