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KELVIN IXIM,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
Appellant,	:	DOCKET NO. A-000500-24
	:	
vs.	:	<u>CIVIL ACTION</u>
	:	
BOARD OF REVIEW, NJ	:	
DEPARTMENT OF LABOR,	:	
AND GRADSTAFF, INC.	:	on appeal from a final agency decision of
	:	the Board of Review, NJ Dept. of Labor
	:	Docket No. DKT00278238
	:	
Respondents.	:	

BRIEF FOR APPELLANT KELVIN IXIM

ON THE BRIEF:
Sarah Hymowitz

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INTRODUCTORY STATEMENT

This appeal challenges the Board of Review's use of an arbitrary legal standard in place of the standard set forth in Board precedent to disqualify Appellant Kelvin Ixim from unemployment benefits. The Board of Review has held that a separation from work lasting six months or less should be assessed as a potential "refusal of suitable work" (a four-week disqualification from benefits) rather than as a "voluntary quit" (a complete disqualification from benefits), and the Appeal Tribunal has assessed entitlement to benefits pursuant to the Board's precedent in subsequent cases. The differentiation, for unemployment eligibility purposes, between short and long periods of employment reflects the New Jersey Supreme Court's recognition that the unemployment statute encourages people to try out new types of work and allows them to access benefits if the new work ultimately proves unsuitable.

Mr. Ixim accepted a position entirely new to him and worked for approximately four months before resigning because the work was not suitable for him. He applied for unemployment, was approved, and received benefits for four months before the agency held him disqualified for voluntarily leaving without good cause and liable for a \$2,907 refund. On appeal, both the Appeal Tribunal and Board of Review affirmed the Unemployment Division's disqualification. The Board reasoned that four months was not a brief period of work warranting a "refusal of suitable work" analysis. Without explanation, the Board refused to consider its own precedent holding that a brief period of

work for purposes of a “refusal of suitable work” analysis is *six* months or less. The random four-month standard the Board used to disqualify Mr. Ixim from benefits renders its decision arbitrary, capricious, and unreasonable.

PROCEDURAL HISTORY

Appellant Kelvin Ixim filed a claim for unemployment benefits dated May 2, 2021 and was deemed entitled to benefits shortly thereafter. Pa1¹. On December 20, 2021, the Unemployment Division held him disqualified from benefits for leaving his job voluntarily, without good cause attributable to the work. Id. It further held him liable for a refund of \$2,907, all of the benefits he had received. Id.

Mr. Ixim filed a timely appeal, and the Appeal Tribunal held a phone hearing in the matter on May 27, 2022. Pa1. On June 1, 2022, the Appeal Tribunal held him disqualified from benefits from March 21, 2021 for voluntarily leaving his job, without good cause attributable to the work. Pa1-3. Mr. Ixim, through counsel, then appealed to the Board of Review, and the Board affirmed the Appeal Tribunal’s decision on October 19, 2023. Pa4-6. Mr. Ixim filed a Request for Reopening with the Board of Review on October 29, 2023. The Board denied that request on September 9, 2024. Pa7. Mr. Ixim filed a Notice of Appeal with the Appellate Division on October 22, 2024. Pa8-9.

¹ “Pa1” refers to Plaintiff’s Appendix, page one.

STATEMENT OF FACTS

Appellant Kelvin Ixim worked from home as a call center representative for Gradstaff, Inc. from November 16, 2020 to March 26, 2021, approximately four months. T4². Prior to that job, his only work experience was waiting tables at restaurants. T13. He had never done this type of work before. T5,6. Nor had he ever worked from home before. T13.

Working from home, his days as a call center representative were entirely sedentary. T5. He would wake in the morning, walk over to the computer desk in his bedroom, and sit down to work in his room for eight and a half hours making his calls. T11. With a high volume of daily calls he had to make, the job was more stressful than he anticipated, and he often had to work late.

Not long after he started the job, he began feeling that the job was taking a toll on him, mentally and physically. As he testified, he had never felt that badly before. T9-10. He was putting on weight and beginning to have problems with his heart. T9,13. “It was just this feeling of being trapped because I would wake up, move from my bed to my computer, be there for 8.5 hours, then I’d get off, shower, eat, and then I’d have like two or three hours before I went back to bed. And I did the same thing over and over again for four months. And it was very draining and taxing. It was really hard for me to

² “T4” refers to the transcript of the May 27, 2022 Appeal Tribunal hearing, page four.

focus at work.” T11. He reached out to his supervisor to ask for assistance, but the supervisor could only offer him some information on meditation. T11.

When Mr. Ixim’s health problems worsened, he saw his doctor. His pulse rate was extremely high. T9. The doctor asked Mr. Ixim what had changed in his life that could explain his health decline, and he explained the type of work he was doing. The doctor responded, “that would explain it,” and said that such a sedentary job would have that kind of impact on his health. T9-10. The doctor was concerned about his weight gain, heart, and increased pulse rate and told him that “[his] sedentary lifestyle wasn’t helping [him].” T5.

At the same time, Mr. Ixim’s grandfather was undergoing treatment for cancer, which, naturally, was very concerning to the family. T7-8. Mr. Ixim felt badly that he was unable to be there for his family because he was so busy with work. T5,13. With his long hours of work, Mr. Ixim was unable to take his grandfather to his radiation therapy or stay with him at home, when needed. T8.

With the negative effects the job was having on his health, and given that he often had to work long hours to finish his calls, Mr. Ixim decided to resign after approximately four months. T4. The job, it turned out, was not what he had anticipated and was not a suitable fit for him. T6. As he testified, at his time of hire, he thought the job would work for him, but that turned out not to be the case. In his words, “It’s not the same to hear a description and then go through it yourself.” T6. A few months after his resignation,

when the restaurant he had previously worked at reopened, he returned to work there.

T14.

LEGAL ARGUMENT

I. THE AGENCY ASSESSED MR. IXIM'S ENTITLEMENT TO BENEFITS UNDER THE WRONG STANDARD. (Pa1,Pa4,Pa7)

The agency analyzed Mr. Ixim's separation from work as a "voluntary quit" under N.J.S.A. 43:21-5(a) and held him completely disqualified from benefits. Pa4-6. Given the brief amount of time he worked in the new job, however, the agency should have reviewed the matter as a "refusal of suitable work" under N.J.S.A. 43:21-5(c). That is the standard for assessing separations from brief periods of employment, and a "refusal of suitable work" analysis would have resulted in Mr. Ixim's entitlement to unemployment benefits, albeit with a potential four-week disqualification. N.J.S.A. 43:21-5(c).

The unemployment statute distinguishes between separations from very brief periods of new work (six months or less, as discussed below) and separations from longer-term jobs. An individual who resigns their longer-term job (more than six months) will face a complete disqualification from benefits if they voluntarily leave the job, without good cause directly attributable to the work. N.J.S.A. 43:21-5(a). A person who resigns a new job (six months or less), however, is assessed under a different standard, that of "refusal of suitable work," and faces only a potential four-week disqualification from benefits. N.J.S.A. 43:21-5(c).

Pursuant to N.J.A.C. 12:17-11.5(a)(1), an “offer of new work,” for the purposes of unemployment eligibility, is “an offer of work made to an unemployed individual by an employer with whom he or she has never worked.” This would certainly apply to Mr. Ixim’s employment with the call center. When an individual refuses a new offer of *suitable* work, they are subject to a four-week disqualification from benefits. N.J.S.A. 43:21-5(c). A person who refuses an *unsuitable* offer of work is not subject to any disqualification from benefits.

**A. THE BOARD OF REVIEW FAILED TO ASSESS MR. IXIM’S
ENTITLEMENT TO BENEFITS CONSISTENT WITH ITS OWN
PRECEDENT, RENDERING ITS DECISION ARBITRARY.
(Pa1,Pa4,Pa7)**

The Board of Review assessed Mr. Ixim’s separation as a “voluntary quit” instead of a “refusal of suitable work” because he worked at the job for four months. The Board held:

“In addressing counsel’s argument, that if the Board finds that the work was suitable the claimant should still not be disqualified under N.J.S.A. 43:21-5(a), based on regulation N.J.A.C. 12:17-11.5(b), *the Board concludes that four months of employment under the circumstances in this case does not constitute a “brief period”* and that his reason for leaving was attributed to the work. Accordingly, we do not find that the claimant’s separation should be viewed as a refusal of suitable work under N.J.S.A. 43:21-5(c).” Pa5.

The Board’s holding that a four-month period of employment is not a brief period of work warranting a “refusal of suitable work” analysis is belied by its own

precedent. In a case designated by the Board of Review as a “leading case,³” the Board of Review held that a separation warrants a “refusal of suitable work” analysis when the claimant worked less than six months:

“...When the claimant continued the employment after the employer moved his establishment, it may be said that he accepted an offer of new work and that **when he continued therein after a reasonable period of time, which we now consider should be limited to no more than six months**, he accepted the new terms attending the employment.” (emphasis added) Pa10-12.

Since the Board rendered the decision above, the Appeal Tribunal has relied on the Board’s analysis in many subsequent cases. (e.g. appeal docket numbers 00236805 – Pa18, 00145963 – Pa21, 00380355 – Pa24).⁴ In the most recent decision (2022), the Appeal Tribunal relied on the Board’s decision establishing six months as the maximum amount of time warranting a “refusal of suitable work” analysis.⁵ Pa13-17. In that case, the Appeal Tribunal declined to assess the matter as a “refusal of suitable work” because the claimant had worked in the job for eight months. Pa14-15.

³ Counsel for Mr. Ixim obtained Board decision docket number BR-71179-C in response to an OPRA request for the Board of Review’s decision cited by the Appeal Tribunal in case docket no. DKT00287053 (Pa13). In response, the Board of Review provided the decision in case docket number BR-71179-C. That decision cites another Board case, case docket no. BR-69033. The Board did not provide the decision in that case. The Board of Review redacted the case name in BR-71179-C, so the only identifying information available is the docket number.

⁴ Pursuant to N.J.S.A. 43:21-6(c), Appeal Tribunal decisions that are not appealed automatically become decisions of the Board of Review. There are no Board of Review decisions in the agency’s online decision database in these cases, so these decisions are considered final agency decisions of the Board of Review.

⁵ The Appeal Tribunal’s decision (Pa13) does not include an actual citation to the Board of Review’s decision, as it should. It merely states, “The Board of Review has historically held...” without any case citation. (Pa13) LSNJ filed an OPRA request to obtain the Board of Review decision referenced by the Appeal Tribunal, and the Board provided LSNJ with a copy of the Board’s decision in BR-71179-C (case name redacted by the Board of Review)(Pa10).

By the Board's own analysis, claimants have a reasonable period of time to determine whether a new job is suitable, and the Board has defined a reasonable period of time to be no more than six months. Pa10-12. After six months, the claimant's acceptance of the terms of the new employment is apparent, and a voluntary quit analysis – rather than a suitability of the work analysis – is more appropriate. Mr. Ixim cited and addressed the Board's precedent on this six-month standard in his appeal, but the Board declined to acknowledge it in its decision. The Board's failure to follow its own precedent or explain why the instant matter is subject to a different standard renders its decision arbitrary.

B. MR. IXIM IS ELIGIBLE FOR BENEFITS BECAUSE HE REFUSED AN OFFER OF *UNSUITABLE* NEW WORK. (Pa1,Pa4,Pa7)

Under N.J.A.C. 12:17-11.2(a), “suitable work” is assessed as follows:

“In determining whether or not the work is suitable, consideration shall be given to the degree of risk involved to health, safety and morals, the individual's physical fitness and prior training, experience and prior earnings and employee benefits, the individual's length of unemployment, prospects for securing work in the individual's customary occupation and commuting distance.

1. For a position to be considered suitable, all of the factors in (a) above must be judged with respect to the particular individual involved...”

Unemployment claimants are expected to actively search for work, and they are encouraged to seize work opportunities when they arise, but they are not expected to accept or remain in jobs that prove to be unsuitable for them. The seminal case on the issue of “refusal of suitable work” is Wojcik v. Board of Review, 58 N.J. 341 (1971). In Wojcik, the New Jersey Supreme Court stated, “It is clear that one need only apply for and

accept suitable work,” and it held that people should be given a reasonable amount of time to explore their ability to cope with new work. *Id.* at 345. If the work turns out to be unsuitable, they should be able to access benefits:

“The question is whether a person who takes work he is not required to take should suffer the loss of unemployment benefits when he is unable to cope with that work. We do not believe he should. A contrary result would inhibit persons who are temporarily unemployed from taking work which, although not commensurate with their former employment, is nevertheless gainful activity which serves the general public interest. Cf. Campbell's Soup Co. v. Div. of Employment Security, *Supra*, 13 N.J. at 436, 100 A.2d 287. We do not believe a person should be penalized for so laudable an effort. *The philosophy of the Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq., is to encourage persons to work and, although the Law wisely recognizes that persons should not be compelled to accept employment which is unsuitable, it is contrary to the spirit of the Law to penalize persons who take such work.* It is well known that today many highly trained persons are unable to find work in their own fields because of economic factors beyond their control. If they are to work at all, many must experiment in new areas which are not ‘suitable’ under the statute.” *Id.* at 345-346.

In the instant matter, the call center work proved unsuitable for Mr. Ixim. As he testified, he had never worked that type of job before. T13. His prior experience was as a waiter in restaurants; not as a sedentary call center representative making phone calls all day long. T13. The call center job did not utilize any of his prior skills or draw from any previous work experience. He had never worked that type of sedentary job before. T7,12. This was an entirely new experience for him. For approximately four months, he gave the job a chance and sought help from his employer and doctor when he was struggling. T9,T11. He resigned only when, after four months, his mental and physical health failed to improve.

Pursuant to the Board's own precedent and the Supreme Court's analysis in Wojcik, when Mr. Ixim resigned, he was still within the "reasonable period of time" one may take to determine whether a new job is suitable. Even if he had *resigned* from a suitable job, he would only be subject to a four-week disqualification from benefits under N.J.S.A. 43:21-5(c). Given the short amount of time he worked for the call center, the Board erred, as a matter of law, by disqualifying him for voluntarily leaving the job without good cause instead of assessing his entitlement to benefits as a "refusal of suitable work" matter.

CONCLUSION

For the reasons stated above, Mr. Ixim respectfully requests that the court reverse the decision of the Board of Review and find him fully eligible for unemployment benefits, without any disqualification, for refusing an offer of unsuitable new work.

Respectfully submitted,
LEGAL SERVICES OF NEW JERSEY
Attorneys for Appellant

By: 

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Dated: April 10, 2025



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July 25, 2025

Via ECOURTS

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Re: Kelvin Ixim v. Board of Review, Department of Labor and
Gradstaff, Inc.

Docket No.: A-500-24

Civil Action: On Appeal from a Final Decision of the Board
of Review

Letter Brief of Respondent, Board of Review, In Opposition
to Appeal

Dear Ms. Hanley:

Please accept this letter brief pursuant to Rule 2:6-2(b) on behalf of
Respondent, Board of Review, in opposition to the appeal filed by Appellant
Kelvin Ixim.



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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

Appellant Kelvin Ixim began working as a remote call center representative for Gradstaff, Inc., on November 16, 2020. (T4).² At the time, Ixim fully understood and accepted the nature and conditions of the work, including that the position required him to work from home and remain

¹ Because they are closely related, these sections are combined for efficiency and the court’s convenience.

² “T” refers to the transcript of the Appeal Tribunal hearing that took place on May 27, 2022; “Aa” refers to Appellant’s appendix; “Ab” refers to Appellant’s brief.

continuously available for customer calls throughout each shift. (T6-7). Although the job often involved a high volume of calls, Ixim was allowed both a scheduled lunch break and flexible, intermittent rest breaks during the day. (T7; T12). He was never asked to work beyond his assigned hours without pay and was only ever required to do so when he failed to complete his duties during his scheduled shift. (T7). And despite having no prior call center experience, Ixim was able to perform all essential duties of his position as described in the job description for the duration of his employment. (T6; Aa1).

In February 2021, Ixim visited his doctor after developing flu-like symptoms. (T9). During the appointment, the physician noted that Ixim had an elevated heart rate and ordered an electrocardiogram, which revealed no abnormalities or arrhythmias. Ibid. The doctor suggested that Ixim's elevated heart rate may have been the result of a sedentary lifestyle and encouraged him to incorporate more physical activity into his routine. (T9-10). Notably, the doctor did not advise or instruct Ixim to leave his job. (T10).

IXIM thus returned to work. Ibid. Approximately one month later, on March 26, 2021, Ixim voluntarily resigned, citing dissatisfaction with the nature and conditions of the work as the reasons he left. (Aa1; T4). Following his resignation, Ixim filed for unemployment benefits on May 2, 2021, and began collecting payments at a weekly benefit rate of \$153 for the weeks ending May

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8, 2021, through September 11, 2021. (Aa1). In total, Ixim received \$2,907 in benefit payments. Ibid.

On December 20, 2021, a Deputy from the Division of Unemployment Insurance (Deputy) mailed a notice of determination letter (Determination) to Ixim, disqualifying him from benefits beginning May 2, 2021, because he left work voluntarily and without good cause attributable to the work. Ibid. The accompanying request for refund held Ixim liable to refund all payments received as benefits. as a result. Ibid. Ixim appealed the Determination and request for refund to the Appeal Tribunal on December 29, 2021. Ibid.

At a May 27, 2022 telephonic hearing on his appeal, Ixim argued that his voluntary resignation did not warrant complete disqualification from benefits because his four-month employment constituted a “brief period” under N.J.A.C. 12:17-11.2 to -11.5. (T14-15). As such, he contended, his separation should have been assessed as a “refusal of suitable work” under N.J.S.A. 43:21-5(c), rather than a voluntary quit under N.J.S.A. 43:21-5(a). Ibid.

In a decision mailed June 1, 2022, the Appeal Tribunal affirmed Ixim’s disqualification, finding that he had not refused suitable work but instead left a suitable position voluntarily and without good cause attributable to the work. (Aa3). Specifically, the Tribunal found that Ixim left work because he was dissatisfied with the sedentary working conditions and the “constant phone call

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tasks” at Gradstaff, not because his health was affected by the job. Ibid. In so finding, the Appeal Tribunal analyzed both N.J.S.A. 43:21-5(a) and (c), ultimately concluding that Ixim was disqualified for benefits as of March 21, 2021. Ibid. Accordingly, the Tribunal upheld the Ixim’s refund liability and modified the effective date of disqualification to March 21, 2021, to correspond with the beginning of the benefit week in which he resigned. Ibid.

Ixim appealed to the Board of Review (Board) on June 7, 2022. (Aa4). On October 19, 2023, the Board affirmed, finding that there was no record basis to establish that the work here was unsuitable. (Aa5-6). The Board further concluded that Ixim’s four months with Gradstaff under the circumstances of this case would not constitute a “brief period” of employment under N.J.A.C. 12:17-11.5(b), and therefore (in the alternative) Ixim’s separation should not be viewed as a refusal of suitable work under that regulation. (Aa5). On September 9, 2024, the Board then denied Ixim’s subsequent request for reconsideration. (Aa7).

This appeal followed.

ARGUMENT

POINT I

THE BOARD CORRECTLY DETERMINED THAT IXIM LEFT WORK VOLUNTARILY AND WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE WORK.

The judicial capacity to review administrative agency decisions is limited. Brady v. Bd. of Rev., 152 N.J. 187, 210 (1997); Pub. Serv. Elec. v. N.J. Dep't of Env't Protec., 101 N.J. 95, 103 (1985). Unless a court finds that the agency's action was arbitrary, capricious, or unreasonable, the agency's ruling should not be disturbed. Brady, 152 N.J. at 210; In re Warren, 117 N.J. 295, 296 (1989). This limited standard of review is informed by three inquiries: (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not have been made on a showing of the relevant factors. Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995).

New Jersey courts therefore accord a "strong presumption of reasonableness" to an agency's exercise of its statutorily delegated responsibilities. City of Newark v. Nat. Res. Council, 82 N.J. 530, 539 (1980).

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And substantial deference is given to an agency's interpretation of its own statutes. N.J. Tpk. Auth. v. Am. Fed'n of State, Cty. & Mun. Emps., Council 73, 150 N.J. 331, 351 (1997). Moreover, "[t]he burden of demonstrating that the agency's action was arbitrary, capricious, or unreasonable rests upon the person challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006). Therefore, the burden of proof rests upon Ixim to establish his right to unemployment compensation. See Brady, 152 N.J. at 218. For the reasons stated below, Ixim has failed to meet this burden.

The New Jersey Unemployment Compensation Law (UCL), N.J.S.A. 43:21-1 to -71, provides, in pertinent part, that a person is disqualified for benefits "[f]or 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" N.J.S.A. 43:21-5(a). Thus, when an employee leaves work voluntarily, the employee must demonstrate that he or she did so for good cause attributable to the work. Morgan v. Bd. of Rev., Div. of Employ. Sec., 77 N.J. Super. 209, 213 (App. Div. 1962). Importantly, "[m]ere dissatisfaction with working conditions which are not shown to be abnormal or do not affect health, does not constitute 'good cause' for leaving work voluntarily." Associated Util. Servs., Inc. v. Bd. of Rev., 131 N.J. Super. 584, 587 (App. Div. 1974) (quoting Zielenski v. Bd. of Rev., 85 N.J. Super. 46, 54

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(App. Div. 1964)). In other words, to justify a voluntary quit, the claimant must show “cause sufficient to justify an employee’s voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.” Trupo v. Bd. of Rev., 268 N.J. Super. 54, 57 (App. Div. 1993) (quoting Domenico v. Bd. of Rev., 192 N.J. Super. 284, 287 (App. Div. 1983)). But above all, “[i]t is the claimant’s responsibility to do whatever is necessary and reasonable in order to remain employed.” Zielenski, 85 N.J. Super. at 53-54.

When an employee voluntarily leaves work for personal reasons unrelated to the employment, he or she is disqualified from receiving benefits under N.J.S.A. 43:21-5(a). Self v. Bd. of Rev., 91 N.J. 453, 457-58 (1982). Our courts have consistently held that certain personal circumstances do not constitute good cause attributable to the work, including leaving employment due to: dissatisfaction over not receiving an anticipated pay increase, DeSantis v. Bd. of Rev., 149 N.J. Super. 35, 38 (App. Div. 1977); relocation to escape an intolerable home living situation, Roche v. Bd. of Rev., 156 N.J. Super. 63, 65 (App. Div. 1978); a lack of transportation, Self, 91 N.J. at 457; and the job duties aggravating a preexisting medical condition not caused by the employment, Stauhs v. Bd. of Rev., 93 N.J. Super. 451, 457 (App. Div. 1967)). See also N.J.A.C. 12:17-9.1(e) (providing non-exhaustive list of circumstances that constitute voluntarily leaving work).

Relevant here, a resignation based on state of health or medical condition does

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not qualify as good cause attributable to the work unless there is credible medical evidence showing that the work caused or aggravated the condition. Wojcik, 58 N.J. 341, 344 (1978); N.J.A.C. 12:17-9.3(d). For example, in Israel v. Bally's Park Place, Inc., 283 N.J. Super. 1, 5-6 (App. Div. 1995), the claimant, a recovering alcoholic and a former pit boss at Bally's Casino, left work at the recommendation of a professional therapist and counselors who maintained that the continued presence of alcoholic beverages in the work environment would impair her recovery. This court found that the "good cause" standard had been met because the claimant had provided "uncontroverted medical evidence[] that her disease had been and would be aggravated by the casino environment[,] and thus was not disqualified for benefits because she had left work with good cause attributable to the work. Id. at 5.

Unlike the claimant in Israel, however, Ixim provided no medical certifications or opinions from a physician attesting that he should resign his position for his physical, emotional, or mental wellbeing. (T10). Thus, in the absence of medical evidence demonstrating that the work caused or aggravated Ixim's condition, there is no credible proof in the record that he left work because of factors related to the work. N.J.A.C. 12:17-9.3(d).

Here, Ixim fully acknowledged that his reason for leaving was due to concerns over his physical and mental health and the difficulty of the job. (T4).

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However, Ixim was never advised by a medical professional to leave his job due to concerns relating to his sedentary lifestyle. (T10). Furthermore, Ixim never obtained or provided his employer with documentation that he had a medical condition caused by or aggravated by the job. (T10). Thus, the record supports the finding that Ixim voluntarily left his position without good cause attributable to the work.

It would thwart the very purpose of the UCL to grant Ixim benefits after he resigned from his job without good cause attributable to the work. Plainly, “to allow [Ixim] to recover [benefits] would subvert the express policy of providing aid to those who are unemployed ‘through no fault or act of his of their own.’” Yardville Supply Co. v. Bd. of Rev., 114 N.J. 371, 375 (1989); Brady, 152 N.J. at 222. And although the UCL is to be construed liberally, the Board is also responsible for preserving the fund against claims by those not intended to share its benefits. Schock v. Bd. of Rev., 89 N.J. Super. 118, 125 (App. Div. 1965).

In short, Ixim failed to do “whatever is necessary and reasonable” to remain employed. Zielenski, 85 N.J. Super. 46 at 53-54. Thus, under the terms of the UCL, Ixim did not qualify for unemployment benefits, as he left work voluntarily, without good cause attributable to the work. Because Ixim’s reasons for leaving work were both voluntary and personal, the Board properly held him disqualified from receipt of unemployment compensation benefits pursuant to

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N.J.S.A. 43:21-5(a) and N.J.A.C. 12:17-9.1. Accordingly, the Board's decision should be affirmed.

POINT II

THE BOARD CORRECTLY DETERMINED THAT IXIM'S SEPARATION SHOULD NOT BE VIEWED AS A REFUSAL OF SUITABLE WORK.

An individual is also disqualified from benefits if he or she “has failed, without good cause . . . to accept suitable work when it is offered.” N.J.S.A. 43:21-5(c). In other words, unemployment benefits are not payable to those who “would prefer benefits to suitable jobs.” Kraus v. A. & M. Karagheusian, 13 N.J. 447, 455 (1953). The UCL is designed to “encourage persons to work and, although the Law wisely recognizes that persons should not be compelled to accept employment which is unsuitable, it is contrary to the spirit of the Law to penalize persons who take such work.” Wojcik, 58 N.J. at 346. But as previously stated, it is the claimants’ “burden of proof to establish their right to unemployment benefits.” Brady, 152 N.J. at 218. Therefore, an employee who refuses work must show that he or she did so for good cause or that the offer was not for suitable work.

N.J.A.C. 12:17-11.4 defines “good cause” as, “any situation over which the claimant did not have control or which was so compelling as to prevent the claimant from accepting work.” In order to establish good cause, the claimant must have

made a reasonable attempt to remove the restrictions pertaining to the refusal. In turn, “suitability” of work is determined by:

[T]he degree of risk involved to health, safety and morals, the individual’s physical fitness and prior training, experience and prior earnings, the individual’s length of unemployment and prospects for securing local work in the individual’s customary occupation, and the distance of the available work from the individual’s residence.

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

Work is not “suitable” if it offers conditions, wages, or hours that are “substantially less favorable to the individual than those prevailing for similar work in the locality[.]” Ibid.

Here, Ixim concedes that he left work through his own volition, but maintains that he is entitled to benefits because his departure from work was a refusal of unsuitable work. (T4-5; Ab5). His resignation, he argues, was accomplished within in a brief and reasonable period time, and thus warrants the application of N.J.S.A. 43:21-5(c) to the facts his case (therefore resulting in a shorter period of disqualification). Ixim’s argument should be rejected, as the record plainly demonstrates that his reason for leaving was due to concerns over his physical and mental health and the difficulty of the job, not the “suitability” of the work. (T4).

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Ixim's job matched the description provided at hire, which he accepted with full knowledge of its sedentary nature. (T6-8). Ixim was never advised by a medical professional to leave his job due to concerns relating to his sedentary lifestyle. (T10). And Ixim testified that he never obtained or provided his employer with documentation that he had a medical condition caused by or aggravated by the job. (T10). The only compelling evidence that Ixim has provided is that his dissatisfaction for the sedentary nature of the work is palpable. But personal dissatisfaction with nature and conditions of the work does not render the work itself unsuitable under the law.

Moreover, Ixim's health concerns and difficulties fulfilling familial obligations do not render the work here unsuitable. When Ixim asked for time off to care for his ill grandfather in December 2020, Gradstaff did not refuse his request. (T8). And Ixim did not take the time off because he wanted to avoid the inconvenience of falling behind during his training period. Ibid. Ixim has provided no other instances in which the job interfered with further familial obligations. (See generally T; Ab). Furthermore, Ixim has failed to demonstrate that his mental and physical health concerns are due to the sedentary nature of the job that could not be addressed through means outside of work.

In this regard, Ixim's reliance on Wojcik is misplaced. First, N.J.S.A. 43:21-5(a) and (c) are distinct disqualification provisions: one applies to

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voluntary quits, the other to refusals of work. As to N.J.S.A. 43:21-5(a), the claimant in Wojcik, like Ixim here, failed to provide adequate evidence to demonstrate that his job aggravated his medical condition. 58 N.J. at 344. The Court thus did not disturb the Board's finding that the appellant left his position voluntarily without good cause attributable to the work. Ibid. Further, the lynchpin to the Court's analysis of N.J.S.A. 43:21-5(c) was the underlying fact that the claimant in Wojcik accepted a new job that he could have refused as unsuitable. Id. at 345. It did not, as Ixim appears to argue, address the concept of suitability as it relates to the work that forms the original basis for an individual's unemployment claim. See id. at 346 (finding that Wojcik's job performing general factory work with a new employer "tolled the period for which he was entitled to receive benefits" from a claim arising from his prior employment as a manufacturing engineer).

Finally, Ixim improperly seeks to substitute unrelated Appeal Tribunal decisions for plain statutory text. (Ab6-7). But the Board is not bound by preceding decisions, nor is this court. Cf. R. 1:36-3 (unpublished opinions do not constitute precedent and are not binding on any court). In this case, Ixim voluntarily resigned. He did not refuse a job offer, nor did his position change after hire. Whether a four-month duration qualifies as a "brief period" under N.J.A.C. 12:17-11.5(b) is not dictated by a rigid standard. Rather, it reflects a

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fact-sensitive determination left to the Board's discretion, grounded in the particular circumstances of each case. And the Board properly exercised that discretion here. (Aa4-6).

In short, the Board's decision that Ixim was disqualified for benefits pursuant to N.J.S.A. 43:21-5(a) is correct, wholly in accord with the governing statutes and regulations, and is amply supported by substantial credible evidence in the record. As the above demonstrates, the Board made a factual determination based on the credible evidence in the record, to which this court should give appropriate deference. Accordingly, the Board's decision should be affirmed.

CONCLUSION

For these reasons, the Board's decision should be affirmed.

Respectfully submitted,

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VIA ELECTRONIC FILING

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**Re: Kelvin Ixim v. Bd. of Review, NJ Dept. of Labor and
Gradstaff, Inc., Docket No. A-000500-24**

**Civil Action: On Appeal from a Final Agency Decision
APPELLANT'S REPLY TO BOARD'S OPPOSITION BRIEF**

Dear Mr. Orlando:

Please accept this letter brief on behalf of appellant Kelvin Ixim.

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INTRODUCTORY STATEMENT

Appellant Kelvin Ixim is not alleging that he left work with “good cause attributable to the work” (N.J.S.A. 43:21-5a) or that he left with “medical good cause” (N.J.A.C. 12:17-9.3). He asserts, rather, that his separation should be assessed as a “refusal of suitable work,” pursuant to N.J.S.A. 43:21-5(c), because he resigned after only fourth months, when he determined that this new work – a position unlike any of his previous work experience - was not suitable for him. The Board of Review held that a four-month work trial period was not “brief,” for the purposes of a “refusal of suitable work” analysis, but failed to distinguish Mr. Ixim’s case from its own precedent – in multiple cases – identifying a six-month (or less) standard for assessing the suitability of new work. Such an arbitrary decision cannot stand.

LEGAL ARGUMENT

I. THE BOARD OF REVIEW’S OWN PRECEDENT RECOGNIZES A SIX-MONTH STANDARD FOR ASSESSING THE SUITABILITY OF A NEW JOB, RENDERING ITS UNEXPLAINED USE OF A FOUR-MONTH STANDARD ARBITRARY.

In his initial brief, Mr. Ixim cited several Appeal Tribunal decisions that relied on a Board of Review case that the Board designated as a precedential (“leading”) case. That case recognized six months as the standard for determining whether or not a new job is suitable. When a worker leaves a new job in less than six months, the separation is assessed, for unemployment purposes, as a “refusal of suitable work,” potentially imposing a disqualification period of four weeks. When a worker resigned from a new job after six months, the separation is assessed as a “voluntary quit,” imposing a complete disqualification from benefits.

Since the Board’s decision in that precedent-setting case, the Appeal Tribunal has relied on the Board’s suitable work assessment repeatedly. The Board now attempts to minimize the weight of those decisions, arguing that the Board is not bound by them. In fact, those Appeal Tribunal decisions constitute final decisions of the Board of Review. Pursuant to N.J.S.A. 43:21-6(c), decisions of the Appeal Tribunal that are not appealed automatically become decisions of the Board of Review and, thereby, final agency decisions. None of the Appeal Tribunal cases Mr. Ixim cited in his initial brief were

appealed.¹ Moreover, the Board has the authority, under N.J.S.A. 43:21-6(e), to modify or set aside any decision of the Appeal Tribunal, but it chose not to do so in any of these cases. Thus, those Appeal Tribunal decisions that the Board is so quick to dismiss are not mere “preceding” decisions. They are all final decisions of the Board of Review.

In the interests of fundamental fairness, transparency, and *stare decisis*, the Board of Review must be consistent with the standards it uses to adjudicate entitlement to unemployment benefits. There may be times, subject to the particular facts of a case, when there is good reason not to apply a certain standard, but if the Board has repeatedly applied a standard and then, without explanation, utilizes an entirely different standard, it must offer an explanation. Otherwise, its decision appears to be arbitrary. Why, in one case, does a claimant get six months to determine whether or not a new job is suitable while, in another case, the claimant must make that determination in less than four months in order to be eligible for benefits? What distinguishes the facts of Mr. Ixim’s case from the cases in which the Board applied a six-month standard? There can be no public confidence in such an arbitrary system of adjudication.

Since 1971, the Board of Review has relied on the principles set forth by the New Jersey Supreme Court in Wojcik v. Board of Review to assess claims involving the

¹ This is apparent through a search of the agency’s online decision database.

suitability of new work. 58 N.J. 341 (1971). In furtherance of the remedial purposes underlying the unemployment statute and in the interests of encouraging unemployed workers to return to the workforce, the Court held that people should be given a reasonable amount of time to explore their ability to cope with new work. The Board clarified that a “reasonable period of time” is defined as six months or less:

“...When the claimant continued the employment after the employer moved his establishment, it may be said that he accepted an offer of new work and that **when he continued therein after a reasonable period of time, which we now consider should be limited to no more than six months**, he accepted the new terms attending the employment.” (emphasis added) Pa10-12.

Mr. Ixim accepted a new position that he’d never held before, and he gave it his best shot. Through no fault of his own, the job turned out to be unsuitable for him. The Board of Review assessed his separation as a “voluntary quit” (a complete disqualification from benefits) instead of as a “refusal of suitable work” (no disqualification for a refusal of unsuitable work; a four-week disqualification for the refusal of suitable work), in contravention to its own precedent. In the absence of any explanation of why the Board chose not to follow its own precedent or why the instant matter is subject to a standard other than the six-month one it previously adopted, the Board’s decision is entirely arbitrary and must be reversed.

CONCLUSION

For all of the reasons above, Mr. Ixim respectfully asks the court to reverse the decision of the Board of Review and find him eligible for unemployment benefits.

LEGAL SERVICES OF NEW JERSEY
Attorneys for Appellant

By: __//Sarah Hymowitz//__

cc: Office of the Attorney General (via electronic filing)
Gradstaff, Inc. (via U.S. Mail)