SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

CLAUDIA WOHL, Appellant v. BOARD OF REVIEW, DEPARTMENT OF LABOR, AND BELLE MEAD PHYSICAL THERAPY, Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-001409-24 CIVIL ACTION ON APPEAL FROM THE BOARD OF REVIEW, DEPARTMENT OF LABOR DOCKET NO. 00319292

BRIEF OF APPELLANT CLAUDIA WOHL

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PRELIMINARY STATEMENT

Appellant, Claudia Wohl ("Claudia"), appeals from the December 4, 2024 decision of the Board of Review (6a) affirming a decision of the Appeals Tribunal ruling (15a) that she must refund $4,140.00 received as unemployment benefits for the weeks ending January 9, 2021 through February 13, 2021. Both the Appeals Tribunal and the Board of Review have determined that she was not entitled to these benefits, and they were an overpayment recoverable and not entitled. Claudia has appealed this determination following an earlier decision under Docket No. 00268409 (40a) in which she was partially successful with the within amounts claimed being remanded for an **initial hearing (**42a, 43a). The appeal is based on the determination that there was "misconduct" on her part. The within appeal challenges the Board of Review's arbitrary and capricious determinations in affirming the Hearing Examiner's failures to accept and review the evidence showing that Claudia did not commit misconduct. There was no full nor a fair hearing entertaining the proofs showing that she was permitted to take time off during the Covid-19 epidemic with the employer's consent and recognition. This was all in light of the rules set out by the employer over Claudia's close to ten years of employment. The employer did not participate in the hearing and presented no contrary argument. During the hearing, the Hearing Examiner entertained separate business and openly ignored Claudia's testimony (T17 – T18). This matter should

be dismissed, and Claudia allowed to retain the unemployment compensation paid to her.

PROCEDURAL HISTORY

This appeal arises from the December 4, 2024 Decision of the Board of Review (6a). The Board of Review affirmed the Appeals Tribunal's December 15, 2023 determination finding Claudia disqualified from benefits for misconduct (15a). The Appeals Tribunal proceeding was a remand for an initial hearing on the issue from an earlier Decision under Docket 268409 from September 9, 2022, holding Claudia disqualified from benefits (40a, 42a, 43a).

The September 9, 2022 determination remanded the issue of misconduct and reimbursement for an initial hearing on that issue (42a, 43a).

On December 11, 2023 the Appeals Tribunal conducted a hearing but failed to provide a full and impartial proceeding, and disregarded and ignored evidence invited and submitted by Claudia (15a, 18a, 19a, 20a, T17 – T18).

The Appeals Tribunal's Hearing Examiner openly ignored Claudia's testimony by holding other business during her testimony (T17 – T18).

The Board of Review's affirmation of the Appeals Tribunal's findings and assessment that a fair hearing was provided and that evidence was reviewed was arbitrary and capricious, and unreasonable and this appeal followed (6a).

STATEMENT OF FACTS

Appellant, Claudia Wohl, appeals from an arbitrary and capricious determination of the Board of Review (6a) upholding the Decision of the Appeals Tribunal (15a, 40a)) which affirmed the Decision of the Appeals Tribunal. The Appeals Examiner, Jerome Williams, improperly upheld the Director's determination that a refund of $4,140.00 of unemployment benefits received by Claudia was warranted (15a following remand 42a, 43a). The Board's affirmation was arbitrary and capricious, and as the Transcript (T1 to T23) reflect the Hearing Examiner failed to provide a full and impartial hearing on these issues. This request for a refund was inappropriate and the Board's affirmation of Hearing Examiner, Williams' Decision was arbitrary and capricious. Claudia was not afforded a full and impartial hearing.

The within procedure followed an earlier appeal under Agency Docket No. 00268409, in which Claudia was partially successful (40a), and in at least two locations in that Opinion the Hearing Examiner remanded this portion of the appeal for an **initial** hearing (42a, 43a). While Mr. Williams, the same Examiner, had made some findings of fact in an earlier hearing, this appeal is from the subsequent remanded initial hearing (15a). In this initial process the Appeals Tribunal invited additional evidence and testimony concerning a charge of misconduct and the demand for reimbursement of the $4,140.00 (see Notice of Hearing and Procedure

at 18a and 19a). The Agency claimed that Claudia had been discharged for misconduct.

In this initial hearing Claudia was instructed to, and did, submit evidence proving that she did not commit misconduct (45a, 50a), but instead, Claudia followed long time procedures established by the employer. During the Covid-19 outbreak she was given time off from work with written recognition from the employer. (23a – 32a).

The Hearing Examiner unreasonably and capriciously failed to review the materials submitted pursuant to the evidentiary process and baldly found instead that Claudia had committed misconduct. He required a refund of the compensation paid for some six weeks. His findings were in the face of communications between Claudia and her employer where the employer stated "Hi, what do you want the front desk to say to <u>your</u> patients when they are questioning why you're out for the remainder of the year?" (26a). The practice recognized that Claudia maintained "her patients" and would do so on her return (20a). There was never any communication, by anyone, of a quit, resignation or Claudia's desire not to return; quite to the contrary Claudia's text messages of December 8, 2020 (23a – 32a) addressed returning once vaccinated. There was never any protest or warning provided by the employer. (See generally Transcript T1-T23)

Claudia was vaccinated on January 5, 2021, and immediately, that day, alerted the employer that she was returning. Despite that mutual understanding, that evening, she was fired by the principal of the practice. Again there was no advanced warning.

During her time out, Claudia kept in contact with the office and in text messages indicated that she intended to return (see Exhibit 11). On January 5, 2021 despite her compliance with the employer's usual standards and customary rules and following instructions, she was dismissed and thereafter filed for unemployment compensation. (Transcript T1-T23)

At the December 11, 2023 telephonic initial hearing on the misconduct, the Hearings Examiner acted arbitrarily and capriciously, was dismissive and actually, openly dealt with other matters during Claudia's testimony (see T17-T18). The Board acted arbitrarily, capriciously and unreasonably in upholding the Decision. The Hearings Examiner failed to hold an impartial and fair hearing (15a).

While this was all pointed out and proven to the Board of Review (45a, 50a), on appeal, the Board of Review summarily affirmed the Decision of the Appeals Tribunal again in an arbitrary and capricious fashion (6a). The Board was wrong in stating that Claudia was given a "full and impartial hearing and a complete opportunity to offer any and all evidence." (6a). (See Transcript, T17 - T18). The Board further erred in finding that there were no valid grounds for further hearings.

The Board's determination was arbitrary and capricious; the Board' decision should be reversed.

LEGAL ARGUMENT

I. The Board of Review Abused its Discretion and Erred in Affirming the Decision (6a, 15a, 40a) of the Appeals Tribunal, as the Appeals Tribunal Failed to Conduct a Full, Fair and Impartial Initial Hearing and Ignored Evidence and Testimony

"Misconduct" means: "conduct which is improper, intentional, connected with the individual's work within the individual's control, not a good faith error of judgment or discretion, and is either a deliberate refusal, without good cause, to comply with the employer's lawful and reasonable rules made known to the employee or a deliberate disregard of standards of behavior of the employer has a reasonable right to expect, including reasonable safety standards and reasonable standards for a workplace free of drug and substance abuse." N.J.S.A. 43:21-5(b); Silver v. Board of Review, 430 N.J. Super. 44 (app. Div. 2013).

Furthermore, N.J.A.C. 12:17-10.2(a) requires that the conduct be intentional, deliberate and malicious.

Upon reviewing the decisions of the Board and Hearing Examiner, the exhibits submitted, and the record, this Court cannot uphold such a finding. The Examiner and Board make no mention of such intentional, malicious or deliberate misconduct (6a, 15a). In fact, the Examiner seemingly disregarded Claudia's written proofs submitted in the proceedings and invited by the Appeals Tribunal (18a, 19a).

Claudia did not act in a manner that was misconduct. She was fired on January 5, 2021 despite her compliance with the employer's usual standards, rules, and following instructive discussions. As Claudia testified, there was no handbook provided by the employer. She had worked with the employer for over a decade and her actions were within the normal course of the practice in place for years (T1-T23). Again, while the examiner had made findings of fact in a prior matter, this present hearing was set out as an **initial** hearing with Claudia given the right to submit evidence describing why Claudia did not commit misconduct deserving a refund (18a, 19a). Furthermore, during the December 11th telephonic hearing, the Hearings Examiner ignored Claudia's testimony while he was conducting other business and conversations with third parties (T17-T18). It is notable that no one from the employer appeared at the hearing and no proofs were provided to carry the employer's burden. In the face of this the Board's decision to affirm was arbitrary, unreasonable and capricious.

Claudia was a practicing Physical Therapist with Belle Mead Physical Therapy for a dozen years from approximately April 14, 2009 through to the firing. She was a part-time professional licensed Physical Therapist. In early December of 2020 in the face of the Coronavirus-19 Pandemic, she was concerned by the methods and manner of the practice; volume of patients; lack of social distancing, and inadequate disinfection of the offices and PT equipment. This was compromising

her health and putting her and her family, some of whom were quarantined from contracting COVID, at risk (T1-T23). This was at the height of the COVID pandemic, before vaccinations were available, and a significant death toll was being reported daily.

The facts show that Claudia and her employer, both the owner and the office manager, discussed her taking time away from the office until vaccinated (23a – 32a). Claudia used the phrase "tapping out" to express her concern with the Covid risk. She messaged and spoke with both the owner Mark Nagel and the office manager Sue Flynn (23a – 32a). At the outset, Claudia sought coverage from another therapist, and the practice found coverage which was the practice's standard procedure (T1-T23). The practices saw to the rescheduling. In fact, Manager, Sue Flynn replied on behalf of the office, "Hi what do you want the front desk to say to *your* patients when they are questioned why you're out for the remainder of the year?" (26a). The practice recognized that Claudia maintained "her" patients and would continue to do so on her return. There was never any protest or warning provided by the Employer. Claudia was vaccinated on January 5, 2021 and immediately, that day, alerted the employer that she was returning. Despite that mutual understanding, she was fired (T1-T23).

We have attached a copy of the text message exchanged dated December 8, 2020. In the conversation, Claudia responds discussing vaccination, "I can't figure

out how we will be called for it and I want to be sure I get mine *so that I can get back to work*!" (28a).

Claudia kept in contact with the office through her several weeks out, offering to purchase a computer and researching vaccinations for her co-workers. In a text message dated Friday, December 18th, she indicated, "Also, I am getting a laptop to do CEU's and make videos. Are Apple computers compatible with *our* software, systems? Should I ask *our* tech guy?" (30a) Had she quit or committed "misconduct" she certainly would not be referring to "our" tech guy and "our" computers (30a). Again, the text messages exist, and her understanding was never countered by the office throughout her time out. There is no misconduct here.

Claudia received her vaccination on January 5, 2021, contacted the office immediately that day, and was asked by an office admin. assistant Marie, if she wanted to return to her regular schedule (T1-T23). That evening, she received a phone call from Mark Nagel, the principal of the practice, who, for the first time, despite her discussion with him, the ongoing communication with employees and Sue Flynn, the office manager, informed Claudia that she was no longer needed at the practice. Claudia was fired. Claudia lost her PT position of a dozen years. Claudia did not act in any manner that constitutes misconduct under N.J.S.A. 43:21-5(b) or proven under N.J.A.C. 12:17-10.2(a).

To prevail in a Department finding of disqualification from benefits because of misconduct, the burden of proof is upon the employer, who shall, prior to such determination provide *written* documentation demonstrating that the employee's actions constitute misconduct. Here, that is not the case considering the documented conversations between the employer and Claudia acknowledging that she was taking a break from the Covid risk, that she had high risk individuals at her home who had been advised to self-quarantine, and the known fact that she would return when vaccinated. The employer acknowledged this on December 8, asking what *her* patients should be told during her absence (26a).

To further support Claudia's appropriate action, she resided with family members who had been advised by their health care professionals to self-quarantine. These included her in-laws who are approaching their nineties, and her husband who was quarantined at home; high risk for age and a heart condition (45a – 50a).

From March 2020, for some eighteen months, the husband was quarantined and worked remotely from home and away from the office which was closed (34a). As you may recall on March 13, 2020, by Proclamation, the President declared a national emergency concerning the Covid-19 pandemic beginning March 1, 2020. 85 FR 15337 (March 18, 2020). The national emergency was extended with the last announcement of continuation made by the President on February 10, 2023. See the White House, Notice on Continuation of the National Emergency Concerning the

Covid Disease 2019 (Covid-19) Pandemic (February 10, 2023). The Biden-Harris administration and Secretary Becerra announced an end to the nation emergency on May 11, 2023. Claudia had a legal right to take time off due to her Covid concerns and her quarantined high-risk family members, under the Families First Corona Response Act (FFCRA). That Act acknowledges and authorized Claudia's break while she sought vaccination. A posting of this right was hung at the employers' places of business (33a).

At no time did Claudia act in a deliberate, malicious nor intentional manner that was "misconduct" and there was no way for the employer to sustain their burden of proof as there is no written documentation demonstrating that the employee's actions constitute an intentional misconduct. In fact, at this **initial** hearing, no one from the employer appeared. There was every indication by Claudia that she was going to return, and when she did, she was fired without any prior warning. This is not a case of misconduct and reimbursement of the several weeks of unemployment benefits ($4,140.00) is unwarranted. The Board's action to uphold the Hearing Examiner's Decision, in the face of his procedural shortcomings was arbitrary and capricious.

Claudia's actions here do not constitute misconduct within the meaning the of the New Jersey Unemployment Compensation Law. This was not a deliberate Breach. See Silver v. Board of Review, 430 N.J. Super. 44 (App. Div. 2013). This

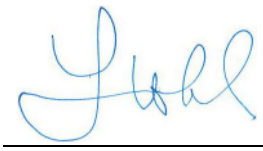
was not deliberate conduct nor actionable. See Bogue Elect. Co. v. Board of Review, 21 N.J. 431, 433-34 (1956). There was no disregard of the employer's standards or rules; in fact, Claudia followed all the appropriate rules long employed by the practice. There was no deliberate or intentional act or conduct violating the employer's instructions. See Agresta v. Board of Review, 232 N.J. Super. 56 (App. Div. 1989). The Hearings Examiner failed to provide the initial hearing called for and the Board blindly affirmed.

CONCLUSION

The decisions of the Board affirming the unwarranted Appeals Tribunal decision must be reversed as the Board acted arbitrarily, capriciously and unreasonably and their affirming of the Appeals Tribunal Determination is not supported by substantial credible evidence in the record as a whole. See Sullivan v. Board of Review, 471 N.J. Super. 147 (App. Div. 2022). Claudia deserved, but never received the full and impartial hearing on remand required.

ARCHER & GREINER, P.C.
Attorneys for Appellant, Claudia Wohl

Dated: June 6, 2025

By: 

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Re: Claudia Wohl v. Board of Review, Department of Labor, and Belle Mead Physical Therapy
Docket No.: A-1409-24

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

Letter Brief of Respondent, Board of Review

Dear Ms. Hanley:

Please accept this letter brief pursuant to Rule 2:6-2(b) on behalf of Respondent, Board of Review.

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ARGUMENT

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

Appellant Claudia Wohl was employed as a physical therapist at Belle Mead Physical Therapy ("Belle Mead") from April 14, 2002, to December 5, 2020. (Aa40). Wohl filed two claims for unemployment benefits with the New Jersey Department of Labor and Workforce Development's Division of Unemployment and Disability Insurance ("Division") — one on April 5, 2020, and one on April 4, 2021. (Aa20; Aa15; Aa6).[2] This appeal arises from the Board of Review's decision holding that Wohl is liable for a refund in the amount of $4,140, after the Board determined that she improperly received benefits in connection with her April 5, 2020 claim for unemployment benefits. However, because the Appeal Tribunal's decision on the April 4, 2021 claim occurred first and directly effected the outcome on the April 5, 2020 claim, the

[1] To avoid repetition and for the court's convenience, the procedural history and counterstatement of facts have been combined.

[2] "Aa" refers to appellant's appendix; "Ab" refers to appellant's brief; "T" refers to the transcript of the Appeal Tribunal hearing dated December 11, 2023.

Board will first discuss the April 4, 2021 claim before turning to the April 5, 2020 claim.

A. Case 268409 — the April 4, 2021 Claim For Benefits.

For her April 4, 2021 claim, Wohl began receiving benefits the week of April 10, 2021, while the claim was pending. (Aa40). Upon review of the claim, on September 22, 2021, a Deputy for the Division determined that Wohl left Belle Mead voluntarily without good cause attributable to the work, and requested a refund in the amount of $10,638, for benefits received on the weeks ending April 10, 2021, to August 7, 2021. (Aa40-43). Wohl appealed that determination on October 1, 2021, under Docket No. DKT00268409 ("Case 268409"). (Aa40-43).

Wohl testified and was represented by an attorney before the Appeal Tribunal in a September 2, 2022 hearing on her appeal. (Aa40). At the hearing, testimony established that on December 7, 2020, Wohl sent her employer a text stating that she was "tapping out" from reporting to work based upon purported concerns over COVID-19. (Aa24; Aa40). Wohl's absence left Belle Mead without coverage; and she did not have COVID-19 at the time of the text, nor did anyone at her job. (Aa40). Moreover, a physician had not directed Wohl to

remain home from work. Ibid. Wohl was then terminated from her position on January 5, 2021. (Aa14).

In a decision mailed on September 9, 2022, the Appeal Tribunal in Case 268409 found that Wohl was discharged from work pursuant to N.J.S.A. 43:21-5(b) for unauthorized absences, which constituted misconduct connected to work. (Aa42). The Tribunal therefore held that Wohl was disqualified from receiving benefits for the five-week period from January 3, 2021, to February 13, 2021, as required under N.J.S.A. 43:21-5(b). (Aa42). However, the Tribunal determined that the disqualification expired prior to the claim dated April 4, 2021, and did not apply to benefits received from April 10, 2021, to August 7, 2021. (Aa42). Therefore, the Tribunal concluded Wohl was not required to refund the sum of $10,638. (Aa42).

Wohl never appealed that Tribunal decision to the Board of Review. Rather, as discussed in more detail below, by way of letter dated December 22, 2022, Wohl appealed a separate request sent by the Director, dated December 15, 2022, for a refund of unemployment benefits in the amount of $4,140. (Aa13; Aa20). That appeal was assigned Docket No. DKT00319292 ("Case 319292") — it was not a part of Case 268409 and did not challenge the Appeal Tribunal's September 9, 2022 decision. While the Board originally treated

Wohl's December 22, 2022 letter as an appeal of the Appeal Tribunal's decision in Case 268409, it was eventually dismissed on March 22, 2023 once it was determined that Wohl only appealed the refund and not the determination that she was discharged for misconduct connected to the work. (A12; Aa39).

B. Case 319292 — the April 5, 2020 Claim for Benefits.

In April 2020, Belle Mead began conducting telehealth visits. (Aa22). Belle Mead was unable to provide clients to Wohl and Wohl was not paid. Ibid. Wohl applied for benefits on April 5, 2020, and she received regular unemployment benefits on that claim for the weeks ending January 9, 2021, through February 13, 2021, in the sum of $4,140. (Aa15; Aa22). But on December 15, 2022 — after the Appeal Tribunal found that Wohl was discharged for misconduct connected to the work in Case 268409 — the Director of the Division notified Wohl that she was not eligible for unemployment benefits in connection with her April 5, 2020 claim due to the misconduct finding, and therefore she was obligated to return the sum of $4,140 for payments received between January 9, 2021, and February 13, 2021, as required under N.J.S.A. 43:21-16(d). (Aa20-21).

As discussed above, Wohl appealed the request for a refund to the Tribunal in a letter dated December 22, 2022 — an appeal docketed as Case

319292. (Aa13-14). A hearing took place before the Appeal Tribunal on December 11, 2023, on the issue of the Director's request for a refund. (Aa15; Aa18-19. Wohl appeared with her attorney, and testified that she received benefits for the period between January 9, 2021, and February 13, 2021. (T4). She also acknowledged that she participated in a prior hearing related to Case 268409. (T4-5). Despite the fact that the appeal focused on the Director's request for a refund — as explained by the hearing officer, (T6) — Wohl's legal counsel insisted on discussing whether Wohl committed misconduct. (T6). Wohl concluded her testimony by claiming that she did not commit misconduct. (T21).

In a decision mailed on December 15, 2023, the Appeal Tribunal affirmed the Director's determination that Wohl was liable for a refund in the amount of $4,140, for benefits received for the weeks ending January 9, 2021, through February 13, 2021, because she was not entitled to receive those benefits under N.J.S.A. 43:21-16(d). (Aa15a-16a).

Wohl appealed that decision to the Board in a letter dated December 26, 2023, and also attempted to challenge the previous Tribunal decision and misconduct finding under Case 268409. (Aa45-50). In response, the Board mailed a letter to Wohl's counsel on November 14, 2024, requesting

clarification of Wohl's December 26, 2023 appeal. (Aa8-9). The Board noted that Wohl's appeal letter addressed "the issue of misconduct related to the work" under Case 268409, rather than the "non-fraud refund" under Case 319292. (Aa8). Thus, the Board explained, "the Appellate Bodies do not have jurisdiction to rule on the issue of misconduct connected to work under the appeal for [Case 319292], as that appeal only addressed the issue of non-fraud refund and the issue of misconduct was already ruled on under a separate appeal." Ibid. (emphasis added). The letter requested that Wohl clarify whether she was appealing the Tribunal's decision in Case 268409, and that if she wished to "pursue the appeal for the misconduct disqualification, the matter under [Case 268409] will be reopened and all issues under that appeal will be reviewed." Ibid.

In a response dated November 18, 2024, Wohl's counsel affirmatively stated "[t]he only appeal that is pending falls under [Case 319292]. Any earlier actions by the Tribunal or the Board of Review were not appealed." (Ra10). The letter went on to state, "[t]he within appeal focuses on the subsequent remanded initial hearing reviewing a demand for a refund of $4,140." (Ra10).

Based in part on Wohl's November 18, 2024 letter, and her assertion that she was not appealing Tribunal's decision in Case 268409, in a decision mailed

on December 4, 2024, the Board affirmed the Appeal Tribunal's determination holding Wohl liable for a refund. (Ra6). The Board noted that "[t]he non-fraud refund was imposed by a prior Appeal Tribunal decision under [Case 2686409], which held the claimant disqualified for benefits from January 03, 2021 through February 13, 2021, as she was discharged for misconduct connected to work." Ibid. And it rejected Wohl's contention that she was not liable for a refund, explaining that their challenge to the underlying determination in Case 268409 was improper: "[a]s the attorney was adamant that they are not appealing the Appeal Tribunal decision under the separate docket number, that matter was not reopened. The Appellate Bodies do not have jurisdiction, under this matter, to change any prior separate Appeal Tribunal decision." Ibid.

This appeal followed.

ARGUMENT

THE BOARD CORRECTLY DETERMINED THAT WOHL WAS OBLIGATED TO REFUND BENEFITS SHE RECEIVED.

An appellate court's review of an administrative agency decision is limited. Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997). "'[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 fact finder could reasonably so conclude upon the proofs.'" Ibid. (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 obligated to accept them.'" Ibid. (quoting Self v. Bd. of Rev., 91 N.J. 453, 459 (1982)). Only if the Board's "action was arbitrary, capricious, or unreasonable" should it be disturbed. Ibid. It is the claimants' "burden of proof to establish their right to unemployment benefits." Brady, 152 N.J. at 218.

From the outset, and despite advising the Board in her November 18, 2024 letter that her appeal is focused on the Director's demand for a refund of benefits received, (Aa10), most of Wohl's brief raises issues not properly before this court. Wohl argues that the determination in Case 268409 that she committed misconduct was arbitrary and capricious. (Ab3). But the issue before this court is limited to the question of whether Wohl is liable for a refund, not whether she was disqualified for misconduct connected to the work. (Aa8). Wohl never appealed Case 268409 to the Board, and no decision from that matter is listed in her amended notice of appeal. Thus, the issue of her misconduct is not part of this appeal. See 1266 Apartment Corp. v. New Horizon Deli, Inc., 368 N.J. Super. 456, 459 (App. Div. 2004) ("only the judgment or orders designated in

the notice of appeal . . . are subject to the appeal process and review"). To the extent Wohl insists on proceeding with an appeal on Case 268409, that appeal of the Tribunal's September 9, 2022 decision is well out of time under Rule 2:4-1(b), and the Tribunal's decision is not an appealable final agency action. On that basis alone, her appeal should be dismissed, and the Board's decision should be affirmed.

Leaving aside that significant flaw in Wohl's appeal, the Board's decision should still be affirmed. The New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 to -20.11, requires that when an individual who is disqualified from receiving benefits has improperly received unemployment benefits, that individual "shall be liable to repay those benefits in full." N.J.S.A. 43:21-16(d)(1) (2023).[3] As explained in N.J.S.A. 43:21-16(d)(1) (2023), "[w]hen it is determined . . . that any person . . . [for any reason] has received any sum as benefits . . . while otherwise not entitled to receive such sum as benefits, such person . . . shall be liable to repay those benefits in full." Ibid.

[3] The relevant provisions of N.J.S.A. 43:21-16(d) were amended in 2022 and 2024. L. 2022, c. 120; L. 2024, c. 102. However, as the Director's request for refund in this case occurred prior to July 31, 2023, (Aa20), the pre-amendment version of N.J.S.A. 43:21-16(d) applies here.

Our courts have consistently recognized that N.J.S.A. 43:21-16(d) requires the full repayment of unemployment benefits received by an individual who for any reason, and regardless of whether funds were claims in good faith, was not actually entitled to those benefits. See Bannan v. Bd. of Rev., 299 N.J. Super. 671, 674 (App. Div. 1997) (claim liable for refund after benefits paid in error while claimant was employed full time as a security guard); Malady v. Bd. of Rev., 76 N.J. 527, 529-31 (1978) (Supreme Court upholding determination that claimant was liable for a refund based on a finding of fraud); Fischer v. Bd. of Rev., 123 N.J. Super. 263, 265-66 (App. Div. 1973) (claimant required to refund unemployment benefits when her employer had erroneously reported her commissions as wages).

Indeed, this court acknowledged that recoupment imposes a hardship on individuals, but still held that it is "necessary to preserve the ongoing integrity of the unemployment compensation system" and to prevent the Fund from being depleted. Bannan, 299 N.J. Super. at 675. And under federal law, states must provide for recoupment in their unemployment compensation laws in order to be eligible for "federal funds to assist in the administration of those laws." Ibid.; see also 42 U.S.C. § 503(a)(9) and (g) (requiring states to implement effective

procedures to prevent and detect unemployment insurance fraud and overpayments).

Here, the Appeal Tribunal already established in Case 268409 that Wohl was terminated from her position for misconduct connected to the work. (Aa42). Wohl never appealed that determination — in fact, she affirmatively stated she was not appealing that decision. (Aa10). And as a result of her decision, the law is clear that Wohl improperly received benefits for the period of January 3, 2021, to February 13, 2021. N.J.S.A. 43:21-5(b); Parks v. Bd. of Rev., 405 N.J.Super. 252, 254 (App. Div. 2009) (recognizing a temporary disqualification for benefits when employee commits misconduct). In particular, Wohl was disqualified from receiving benefits on those weeks because she was discharged for misconduct. (Aa42). Accordingly, pursuant to N.J.S.A. 43:21-16(d) and Fisher, and based upon the testimony and evidence presented, the Board correctly determined that Wohl was liable for a refund of benefits received in the amount of $4,140. (Aa6).

Wohl has presented no evidence that the Board's decision was arbitrary and capricious, or contrary to the record before the Board. Instead, Wohl attempted to revisit the argument from Case 268409 that she did not commit misconduct, despite her previous assertion that this appeal only addressed the

issue of a refund of benefits. As set forth above, Wohl did not appeal the Appeal Tribunal's September 9, 2022 decision to the Board of Review. Moreover, she did not list that decision in her amended notice of appeal. The law does not permit her to relitigate the issue of misconduct now, as the only issue before this court is the issue of the Director's request for a refund. Cf. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) ("our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'"). And absent a waiver of recovery by the Director, Wohl was required to repay the overpayment of benefits. N.J.A.C. 12:17-14.3. The Board's determination that Wohl was obligated to refund the amount of overpayment fully accorded with N.J.S.A 43:21-16(d) and N.J.A.C. 12:17-14.3.

CONCLUSION

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

Respectfully submitted,

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Re: Claudia Wohl v. Board of Review, Department of Labor, and Belle Mead Physical Therapy
Docket No.: A-1409-24
Civil Action: On Appeal from a Final Decision of the Board of Review
Reply Brief of Appellant, Claudia Wohl

Dear Ms. Hanley:

Please accept this Letter Reply Brief on behalf of the Appellant, Claudia Wohl.

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

As recognized by both the Appellant and the Respondent Agency, Appellant Claudia Wohl ("Claudia") was employed as a physical therapist by Belle Mead Physical Therapy for many years. This appeal arises from the Board of Review's decision holding that Claudia is liable for a refund

of unemployment benefits received. Those benefits were for the weeks ending from January 9, 2021, through the week ending February 13, 2021, totaling some $4,140.00.

Despite being mentioned by the Board in the Respondent's Brief, the benefits paid and being reviewed in this appeal have nothing to do with an earlier claim that Claudia had made in April of 2020, when the employer's professional practice was shuttered on March 3, 2020, by COVID. See Claudia's Outline 22(a). Claudia did make a claim in April of 2020 and received benefits, but again, those benefits arose from the closure of the practice, and had nothing to do with the claim made after she was fired in 2021. In fact, on May 26, 2020, the employer notified Claudia of the office's reopening, and she did return to work despite not being vaccinated against COVID. See the Employer's Reopening Notice (51a). Again, this appeal has absolutely nothing to do with Claudia's 2020 claim. That connection seems to be an error on the part of the agency.

The benefits received by Claudia that are the subject of this appeal extended from the weeks of January 1, 2021 (21a) when she was fired, through August 7, 2021 (53a) when she found work at Princeton University. Again, any reference to an April 2020 claim is a mistake.

When Claudia received the initial Notice of Determination (52a) seeking a refund of $10,638.00 for the benefits paid from April 2021 through August 2021, that Notice claimed that she, "quit [your] job without good cause" (55a). There was no mention of misconduct. Claudia engaged counsel, appealed that determination, and a hearing was held on 09/02/2022.

At that hearing, the Hearings Examiner determined that Claudia was not required to repay the $10,638.00 earned between the weeks ending 04/10/21 through 08/07/21. However, the

Hearings Examiner for the first time referred to a charge of "misconduct" concerning Claudia's benefits earned for the weeks ending 01/03/21 through 02/13/21 and the examiner determined:

> "The matter of Claimant's eligibility for benefits during reported weeks of unemployment is remanded to the Deputy for an initial determination" See (42a) and (43a)."

Thereafter, the Director issued a request for a refund mailed on 12/15/22 indicating:

> "You were discharged for misconduct"
>
> See (20a), the request was accompanied by a schedule of overpayment (21a).

Claudia thereafter appealed that second determination, received confirmation of a phone hearing schedule for the 12/11/23 (18a) along with instructions for preparing for the hearing, including the rights to submit evidence and witness testimony (19a). Claudia timely submitted her evidence to the appeal tribunal well in advance of the hearing (13a).

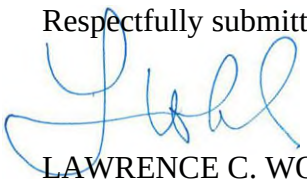
Claudia did not appeal the first decision of the appeal tribunal mailed on 09/09/22, as it was favorable concerning the $10,638.00, and that decision had remanded any additional amount for an "initial" determination/ hearing, which was thereafter scheduled with all of the due process protections made available for the submission of evidence.

The "initial" hearing concerning the $4140.00, and "misconduct" was thereafter held, but the Hearings Examiner who failed to provide a full fair and impartial hearing. The examiner's failures are noted in the Appellant's previous submission, and are reflected in the transcript. The Board of Review arbitrarily upheld the examiner's faulty, incomplete, and unfair determination and this appeal followed.

LEGAL ARGUMENT AND CONCLUSION

For all of the reasons set out in the Appellant's initial Brief, along with the procedural clarifications set out in this Reply, the Appellant Claudia Wohl seeks reversal of the determination of the Board of Review and the finding that she is not required to refund $4,140.00. While a remand could be an appropriate outcome, this tortured matter should best be dismissed.

Respectfully submitted,



LAWRENCE C. WOHL

LCW:lmt
Enclosures

cc: Belle Mead Physical Therapy
Christopher Chiacchio, Deputy Attorney General