

Docket No. A-001950-24

**SUPERIOR COURT OF
NEW JERSEY**

**P.O. BOX 006
TRENTON, NJ 08625**

**In the matter of the Claim of
Carlos E. Mendez**

Appellant,

v.

**BOARD OF REVIEW,
DEPARTMENT OF LABOR AND CREAM
O LAND DAIRY, INC.,**

Respondent.

BR No. 00330683

APPELLANT'S BRIEF

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APPELLANT'S BRIEF
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I. PRELIMINARY STATEMENT

This is an appeal from a decision by the Board of Review (hereinafter BR No. 00330683) filed on January 3, 2025. The Appellant, Carlos E. Mendez was disqualified for benefits by the Appeal Tribunal on February 26, 2023 for leaving the work voluntarily without good cause attributable to the work under N.J.S.A. 43:21-5(a).

An appeal hearing with Appeal Examiner Jerome Williams occurred on January 31, 2024 whereby the Appeal Examiner determined that the Appellant, Mr. Mendez was not entitled to benefits as he left work

voluntarily without good cause attributable to the work and is disqualified for benefits as of February 26, 2023 in accordance with N.J.S.A. 43:21-5(a).

The Appellant appealed the Appeal Examiner's decision to the Board of Review on February 12, 2024.

The Board of Review affirmed the Appeals Examiner's decision on January 3, 2025.

The Appellant respectfully submits that the Board's finding of leaving the work voluntarily without good cause attributable to the work is not supported by substantial evidence in the record and is contrary to public policy.

II. QUESTIONS PRESENTED

WHETHER THE HEARING SHOULD HAVE BEEN CONDUCTED WITHOUT A SPANISH INTERPRETER.

WHETHER THE CLAIMANT VOLUNTARILY SEPARATED FROM EMPLOYMENT.

WHETHER THE EMPLOYER'S WITNESSES SHOULD HAVE BEEN SEQUESTERED. (Not raised in the hearing)

WHETHER A SUFFICIENT BASIS WAS ESTABLISHED TO FIND EMPLOYER'S WITNESSES WERE MORE CREDIBLE THAN THE CLAIMANT.

III. STATEMENT OF FACTS

The claimant (Carlos Mendez) started employment on August 25, 2017.

On or before February 28, 2023, Mendez inquired about a discrepancy in his paycheck. Mendez was terminated on March 3, 2023.

IV. ARGUMENT

WHETHER THE HEARING SHOULD HAVE BEEN CONDUCTED WITHOUT A SPANISH INTERPRETER.

1. The claimant's first language is Spanish. No interpreter was provided for the claimant. The claimant's attorney informed the appeal tribunal that Mendez' first language is Spanish and sufficient for "testimonial purposes". The Appeal Examiner should have included a Spanish interpreter for the entire proceeding. (Tr. Pg. 38, ln 14-16)
2. The record contained "Crosstalk" and parts were "inaudible". (Tr. Pg 29, ln 12), (Tr. Pg. 30, ln 11), (Tr. Pg. 36, Ln 13), (Tr. Pg. 47, Ln 20), (Tr. Tr. Pg. 62, ln 13), (Tr. Pg. 64, ln 9)

WHETHER THE CLAIMANT VOLUNTARILY SEPARATED FROM EMPLOYMENT.

3. The claimant's attorney asked Supervisor Caravano, who terminated the claimant, if he was aware that employees are permitted to ask questions about their wages under the New Jersey Wage and Hour Law, and that an employer's negative action against them is that are potentially unlawful retaliation?" (Tr. Pg. 29, ln 18-20) Caravano responded, "...I do not do payroll. I do not do your taxes... get in touch with HR, get in touch with payroll..." (Tr. Pg. 29, ln 21-22, Pg. 30, ln 1-3) It was never to explained to Mendez how deductions were computed. (Tr. Pg. 64, ln 14-17) Mendez was terminated on March 3, 2025 for asking Caravano about his payroll check.
4. Caravano said that Mendez "resigned" and "I didn't terminate him, He resigned." (Tr. Pg. 30, ln 6)
5. In fact, this was not the first time the claimant had a dispute with the employer and was terminated. In April of 2022, Mendez' truck load was short by 78 cases. (Tr. Pg. 16, ln 9) Mendez was instructed to continue his route until another truck replenishes his load and Mendez asked about

being compensated for stops that had already been done. Mendez was “terminated” by Caravano, similarly, as in 2023, and Mendez promptly returned to work. (Tr. Pg. 16, ln 10-22)

6. Prior to February 28, 2023, Mendez inquired about previous deductions on his paycheck with Human Resources. Caravano took offense to Mendez’ inquiry stating, “I don’t fucking need you here, not even tomorrow, not next week.” (Tr. Pg. 9, ln 3-4)

However, after speaking with Supervisor “Scott” Stoner, Mendez was placed back to work on March 1. (Tr. Pg. 9, ln 15-18)

7. Mendez spoke to Foreman Jeremiah Rice in the parking lot (Tr. Pg. 10, ln 10-11) and was approved for a personal day for March 2, (Tr. Pg. 10, ln 12) but when Mendez returned to work on March 3 at 4:40 in the morning (Tr. Pg. 11, ln 1) Mendez was locked out of the payroll system, (Tr. Pg. 17, ln 14-15) prevented from entering the building, (Tr. Pg. 12, ln 2) and his badge did not work. (Tr. Pg. 19, ln 7-8)

8. A contract provision states that a resignation letter must be signed. (Tr. Pg. 44, ln 18-19)

9. Caravano insisted that Mendez sign a resignation letter. (Tr. pg. 9, ln 2)

10. Mendez refused to sign the resignation letter. (Tr. Pg. 9, ln 7)

11. Mendez returned to work the next day, March 1, 2023. (Tr. Pg. 30, ln 7-8)

12. The Board of Review wrote that the testimony of the union representative to be “the most persuasive and most credible as he testified that he was ‘dragged into’ the unemployment proceedings after colluding with the claimant to deceive the employer in order for the claimant to receive the maximum compensation pursuant to the Union contract and so he could collect unemployment benefits.” This statement is patently false and the basis for the assertion is mischaracterized. (See Board of Review Decision)

WHETHER A SUFFICIENT BASIS WAS ESTABLISHED TO FIND EMPLOYER’S WITNESSES WERE MORE CREDIBLE THAN THE CLAIMANT.

13. The Appeals Examiner had not demonstrated a sufficient basis to find the Union representative Jeremiah Rice to be competent or credible.

Why would the Appeals Examiner find him more credible than the claimant? Because the Union Representative stated over and over that he was “150% aware” of what transpired, even though it was just his opinion? (Tr. Pg. 36, ln 5) or at another point in the record, he said, “He (Mendez) was ‘100% aware’”. (Tr. Pg. 36, ln 13) It seems that the Appeals Examiner chose to accept Rice’s “percentages” as reliable, without a sufficient basis to do so. Rice testified, “I was brought in after the fact.” (Tr. Pg. 32, ln 14)

14. Rice was not present when the claimant was terminated or when Mendez asked about his paycheck. As Rice admitted he wears two hats. “I carry two titles. I’m a driver and I’m a member representative for the union.” (Tr. Pg. 47, ln 7-8) His responses depend on who’s asking the questions.

15. Mendez never colluded with the Union Representative to deceive the employer in order to collect unemployment benefits. The Union representative attempted to do that on his own. Rice stated to Mendez, “There is no policy. They wrongfully terminated you. Complaining isn’t a violation.” (Tr. Pg. 38, ln 3-5)

16. Mendez did not tell Rice that he was going to resign in the parking lot. Mendez discussed with Rice about taking a personal day. (Tr. Pg. 10, Ln 10-13) Rice testified that the conversation was about strategy.

“[Our] job at that time (as a Union Representative) was to make sure that his next opportunity to come in was with the intent to have him look as if he was being terminated. And I already was privy to the fact that he was, or resigned, or they accepted his resignation....**I was** (emphasis added) trying to create an impropriety against the company. To show that he wasn't resigned, he was terminated, they were gonna deny him access. **So I said** (emphasis added) go to work and make it appear as if you weren't resigning and that you were coming to work. ...**And that's my job as his representative** (emphasis added) and **I didn't think** (emphasis added) he was gonna go this far and have to drag me into this.” (Tr. Pg. 42, ln 7-18)

17. Rice continues on

“I just told him there's a provision in the contract because if we were to go about the way that he wanted to go about it, because he didn't want to resign because he was 'fearful' that he wouldn't get compensated. I told him if he resigned, you will get compensated. But guess what, ma'am, the big question herein lies, would he get paid out his unemployment benefits if he resigned? No, he wouldn't. So, we had to make it- make it in proprieties and show it that he got denied access because he was terminated. **So I went, made sure he got paid under the voluntary resignations provision without the signature of the resignation.** (Emphasis added) Tr. Pg. 46, ln 16-22, and Tr. Pg. 47, ln 1-2)

18. Rice already knew Mendez wasn't able to return to work when he

spoke with Mendez in the parking lot. Rice's objective at this point as a Union representative was for Mendez to be compensated for vacation, etc. and to qualify for unemployment benefits. (Tr. Pg. 39, ln 3-4)

Mendez expressed to Rice that he was terminated and had not resigned. (Tr. Pg. 39, ln 17-18)

19. Rice was not "dragged into the proceedings" as he was playing both sides of the field. The Union representative was acting and testified to serve his own interests rather than the interests of Union member Carlos Mendez.

V. CONCLUSION

The Board's basis in affirming the Appeals Examiner's decision and finding in favor of the employer that the claimant quit his job without good cause is misplaced. Mendez did not voluntarily leave his employment. The claimant's benefits should not be disqualified as of February 26, 2023 under N.J.S.A. 43:21-5(a). As this case was not adequately developed, it should be remanded back for another hearing, reversed or schedule a de novo hearing as the Appeals Examiner, in the interests of justice, cannot be impartial.

Respectfully submitted,

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September 17, 2025

Via ECOURTS

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Superior Court of New Jersey -- Appellate Division
Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, NJ 08625

Re: Carlos E. Mendez v. Board of Review, Department of Labor
and Cream O Land Dairy, Inc.

Docket No.: A-1950-24

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.



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RESPONDENT’S APPENDIX¹

Board of Review Decision, mailed January 3, 2025	Ra1
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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS²

Appellant Carlos E. Mendez worked for Cream O Land Dairy, Inc., as a truck driver from August 25, 2017, to February 28, 2023. (Pa18).³ On February 26, 2023, Mendez filed a claim for unemployment insurance benefits. Ibid. No

¹ Respondent included a duplicate document in its appendix because Appellant’s copy of the document was not legible.

² The procedural history and counterstatement of facts have been combined to avoid repetition and for the court’s convenience.

³ “Pa” refers to Appellant’s appendix. “T” refers to the transcript of the hearing dated January 31, 2024. “Ab” refers to Appellant’s brief. “Ra” refers to Respondent’s appendix.

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benefits were paid on the claim. (Ra1). In a determination mailed on March 23, 2023, a Deputy of the Division of Unemployment Insurance (“Division”) imposed a disqualification for benefits from March 5, 2023, because Mendez left work voluntarily without good cause attributable to such work. Ibid. Mendez appealed the Deputy’s determination to the Appeal Tribunal on March 30, 2023. Ibid. The Tribunal conducted a hearing on January 31, 2024, and heard testimony from Cream O Land’s operations manager, vice president of operations, and human resources manager, as well as Mendez and his union representative. (T7; T24; T30; T50; T52).

The operations manager, Mando Caravano, testified Mendez resigned after he approached Caravano arguing over a tax discrepancy in his paycheck. (T24). Caravano advised Mendez to call payroll for an explanation of the tax deduction. (T24; T29; Pa18). Caravano stated Mendez gave his “two weeks’ notice” and told Caravano “do not ask me to come back.” Ibid. Caravano said he would not “hold” Mendez to the two weeks and would take his resignation that day. (T24-25). He also explained he had no control over the tax deductions and would have no cause to fire Mendez for questioning it. (T24; Pa18).

Under Cream O Land’s contract with Mendez’s union, resignations must be submitted be in writing for employees to be paid the remainder of their compensation. (T25). However, Caravano testified that even if employees

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refused to resign in writing, they are still paid the remainder of their compensation. (T25; T28; T29). Mendez refused to sign the resignation letter, although verbally telling Caravano he was resigning. (T29). Mendez was still paid the remaining salary due to him per his union contract. (T28). The human resources manager, Daviani Cordero, testified the tax deduction was indeed a payroll error, and that he was informed by Caravano that Mendez resigned. (T52-53). Cream O Land's vice president of operations, Scott Stoner, testified that he never spoke directly with Mendez about the incident but he was told by human resources that Mendez resigned. (T50-51).

A foreman driver for the company and Mendez's union representative, Jeremiah Rice, testified that Mendez went into the office to speak to Caravano with an intent to resign but wanted to receive full compensation of what he was owed. (T34-35). Rice advised Mendez to return to work the next day to give the appearance that he was terminated, rather than resigned. (T42; Pa18). Rice and Mendez also exchanged text messages confirming the plan to ensure Mendez received unemployment benefits despite his intent to resign. (T38-39).

The Tribunal affirmed the Director's determination in a decision dated February 2, 2024. (Pa18). The Tribunal found that Mendez asked his supervisor, Caravano, to explain a tax deduction on his paycheck, and when the supervisor was unable to explain the deduction Mendez became upset and quit.

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Ibid. The Tribunal also found that Caravano asked Mendez to sign a resignation form but Mendez refused. Ibid. The Tribunal also noted testimony that Mendez was later advised by his union representative to return to work right away to give the appearance of being discharged, and Mendez did attempt to return to work the next day but was denied access because he was removed from the payroll. Ibid.

The Tribunal found Caravano's testimony that he advised Mendez to speak to payroll regarding his questions credible. Ibid. The Tribunal also found testimony from Rice advising Mendez to return to the office to give the appearance of being discharged credible. Ibid. Based on the testimony, the Tribunal concluded that Mendez resigned over unresolved tax deductions, and not for good cause. Ibid. Therefore, it found that Mendez left work voluntarily without good cause attributable to the work, and was disqualified for benefits as of February 26, 2023 in accordance with N.J.S.A. 43:21-5(a). Ibid.

Mendez appealed the Tribunal's decision to the Board on February 12, 2024. (Ra1). In a decision mailed January 3, 2025, the Board affirmed the Tribunal's decision, and supplemented the record with additional facts. Ibid. The Board found Rice's testimony the most persuasive and credible because he admitted to colluding with Mendez in order for him to receive the maximum compensation pursuant to the union contract. (Ra2). It noted that Rice testified

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despite potential adverse repercussions from his employer. Ibid. The Board found that Mendez resigned due to fear of retaliation after he inquired about the reduction in his vacation pay in addition to the unresolved tax deductions; there was no evidence, however, to suggest any retaliation. Ibid. The Board rejected appellant's claim that facts Savastano v. Bd. of Rev., 99 N.J. Super. 397 (1968) were similar to the record here. (Ra2). In that case claimant left "in a huff" and here Mendez had opportunity to rescind his resignation. Ibid. Therefore, the Board concluded that Mendez was adamant in his decision to resign and that any of his subsequent actions in returning to work were a ploy to get paid according to the union contract and to receive unemployment benefits. Ibid. Therefore, the Board found Mendez left work voluntarily without good cause attributable to the work and is disqualified for benefits as of February 26, 2023 under N.J.S.A. 43:21-5(a). Ibid. This appeal followed.

ARGUMENT

THE BOARD OF REVIEW CORRECTLY DETERMINED THAT MENDEZ WAS DISQUALIFIED FOR UNEMPLOYMENT BENEFITS BECAUSE HE LEFT WORK VOLUNTARILY 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. & Gas Co. v. N.J. Dep't of Env't Prot., 101 N.J. 95, 103 (1985). Unless a court finds that the

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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, whether the agency followed 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).

The purpose of the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 to -71, is to alleviate the worker and her family of the burden of involuntary unemployment by providing a temporary source of income to the worker when she is out of work through no fault of her own. Brady, 152 N.J. at 212. However, "[i]n the wake of a voluntary departure from work, the claimant bears the burden to establish good cause attributable to such work for leaving." Ardan v. Bd. of Rev., 231 N.J. 589, 602 (2018) (emphasis added) (internal quotation marks omitted); N.J.A.C. 12:17-9.1(c). Thus, the UCL provides, in pertinent part, that an individual shall be 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

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reemployed and works eight weeks in employment” N.J.S.A. 43:21-5(a); Utley v. Bd. of Rev., Dep’t of Labor, 194 N.J. 534, 544 (2008).

The statute does not define “good cause,” but courts have interpreted the phrase to mean a “cause sufficient to justify an employee’s voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.” Ardan, 444 N.J. Super. 576, 585 (App. Div. 2016), aff’d, 231 N.J. 589 (quoting Domenico v. Bd. of Rev., 192 N.J. Super. 284, 287 (App. Div. 1983) (internal quotation marks omitted)). To be entitled to benefits, a claimant must therefore leave for “a reason directly related to the individual’s employment, which was so compelling as to give the individual no choice but to leave the employment.” N.J.A.C. 12:17-9.1(b). As the Supreme Court of New Jersey has held, “[t]he test of ‘ordinary common sense and prudence’ must be utilized to determine whether an employee’s decision to leave work constitutes good cause.” Brady, 152 N.J. at 214 (quoting Zielenski v. Bd. of Rev., 85 N.J. Super. 46, 52 (App. Div. 1964)).

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, 91 N.J. at 457-58. 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

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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).

Here, Mendez contends that he was terminated for asking a question regarding his pay check, but the evidence in the record demonstrates that Mendez resigned without good cause.⁴ (Pb6; T30). Caravano testified that Mendez became argumentative when Caravano told him he had nothing to do with payroll issues and to contact human resources. (T24; T29). Mendez became more argumentative and yelled to Caravano that he was resigning. (T24). While Mendez alleges that because he did not sign a resignation letter he never intended to resign, (Pb8; T8), Caravano testified that he verbally accepted Mendez's resignation and that Mendez was paid the remaining salary

⁴ Mendez argues for the first time in his brief that he should have been provided with a Spanish interpreter at the Tribunal hearing. (Pb5). However, Mendez was represented by counsel during the hearing, who indicated that Mendez did not need an interpreter. (Pb5; T38).

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due to him per his union contract. (T25; T28; T29). And importantly, Rice testified that Mendez had every intention of resigning the day he spoke with Caravano. (T34). Rice admitted he and Mendez came up with a plan for Mendez to resign but still receive unemployment benefits. (T42). His intent was to make it appear that Mendez did not resign from his position but was terminated. Ibid. There were text message exchanges, read into the record during the Tribunal hearing, between Rice and Mendez that also confirmed their plan to ensure Mendez received unemployment benefits. (T38-39; Pa18).

Mendez also incorrectly argues that the credibility determinations by the Tribunal were not “sufficient[.]” (Pb8). Specifically, he argues that Rice was not present when he was allegedly terminated or when he spoke with Caravano; and he denies colluding with Rice to collect unemployment benefits. Ibid. Instead, he blames the union representative for “attempting to do this on his own.” Ibid. But again, the substantial evidence in the record shows that Mendez and Rice both discussed, in person and via text message, Mendez returning to the office to make it appear as if Cream O Land terminated him. (T38-39; T42). The Board’s credibility determinations and findings of fact are entitled to substantial deference, and Mendez cannot carry his burden of overcoming that deference. N.J. Tpk. Auth. v. Am. Fed’n of State, Cty. & Mun. Emps., Council 73, 150 N.J. 331, 351 (1997).

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The Board correctly determined that Mendez was disqualified from receiving benefits due to voluntarily quitting without good cause. There is no evidence to suggest he left with good cause. In short, Mendez failed to do “whatever is necessary and reasonable” to remain employed. Zielenski, 85 N.J. Super. at 53-54. And his explanation for leaving also does not fall under any of the circumstances set forth in N.J.A.C. 12:17-9.1(e). Thus, Mendez did not qualify for unemployment benefits, as he left work voluntarily, without good cause attributable to the work, and the Board properly held him disqualified from receipt of unemployment compensation benefits pursuant to N.J.S.A. 43:21-5(a). 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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ATTORNEY GENERAL OF NEW JERSEY

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cc: Carlos E. Mendez (via regular mail)
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