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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3826-15T1

LEE C. HUGUENIN,

Appellant,

v.

BOARD OF REVIEW and
ARROW ENVIORNMENTAL SERVICES,

Respondents.

Argued July 25, 2017 – Decided August 4, 2017

Before Judges Reisner and Suter.

On appeal from the Board of Review, Department
of Labor and Workforce Development, Docket No.
077,567.

Richard T. Smith argued the cause for
appellant (Gill & Chamas, LLC, attorneys; Mr.
Smith, on the brief).

Marolhin D. Mendez, Deputy Attorney General,
argued the cause for respondent Board of
Review (Christopher S. Porrino, Attorney
General, attorney; Melissa H. Raksa, Assistant
Attorney General, of counsel; Ms. Mendenz, on
the brief).

Respondent Arrow Environmental Services has
not filed a brief.

PER CURIAM

Petitioner Lee C. Huguenin (petitioner) appeals the April 13, 2016 decision by the Department of Labor and Workforce Development Board of Review (Board of Review) that denied his application for unemployment benefits. We affirm.

Petitioner was a pest control operator working full-time as an employee of Arrow Environmental Services when on August 20, 2013, he sustained injuries on the job. He received workers' compensation benefits from August 27, 2013 until November 12, 2015, and he was considered temporarily but totally disabled. Petitioner was cleared to return to work on November 12, 2015. He made application for unemployment benefits on November 15, 2015, because his former employer no longer had employment for him. His claim for benefits was denied on December 4, 2015. He appealed to the Appeal Tribunal, which rejected his claim on January 15, 2016, following a hearing. Petitioner appealed to the Board of Review, but it affirmed the denial of unemployment benefits by final decision of April 13, 2016.

Our review of an administrative agency decision is limited. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). Administrative agency decisions are generally upheld on appeal unless they are arbitrary, capricious, or unreasonable; are unsupported by substantial credible evidence in the record; or are contrary to

express or implied legislative policies. Saccone v. Bd. of Trs. of Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014); Lavezzi v. State, 219 N.J. 163, 171 (2014). We give considerable weight to a state agency's interpretation of a statutory scheme that the [L]egislature has entrusted to the agency to administer[,]" In re Election Law Enf't Comm'n Advisory Op. 01-2008, 201 N.J. 254, 262 (2010) (citing Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 196 (2007)); see also GE Solid State v. Dir., Div. of Taxation, 132 N.J. 298, 306 (1993), but we are not bound by it. Lavezzi, supra, 219 N.J. at 172.

The Board of Review did not err in rejecting petitioner's claim for unemployment benefits. Eligibility for unemployment benefits is determined by satisfying the requirements of N.J.S.A. 43:21-4. See N.J.A.C. 12:17-5.1 (describing basic unemployment eligibility requirements). There was no dispute petitioner made a claim for benefits and was cleared to work, satisfying three of the four requirements. See N.J.S.A. 43:21-4(a)-(c). However, petitioner did not meet the "base week" or "wages" requirements under N.J.S.A. 43:21-4(e)(4) because his only income was from workers' compensation.¹ He does not dispute this.

¹ The applicable regulation provides:

A petitioner who does not have sufficient qualifying "base weeks" or "wages" to qualify for benefits has the option of applying for benefits using one of two "alternative" base years "if the period of disability was not longer than two years." N.J.S.A. 43:21-19(c)(3). The regulations make clear the section "applies to individuals receiving [w]orkers' [c]ompensation for a period not to exceed two years." N.J.A.C. 12:17-5.6(a)(2). None of the parties have disputed that petitioner received workers' compensation benefits for more than two years. As such, petitioner could not satisfy the fourth requirement of N.J.S.A. 43:21-4.

Petitioner contends the period of time during which he received workers' compensation should not be counted or, in the

(a) To be eligible for benefits, an individual during his or her base year period, consisting of the first four of the most recent five completed calendar quarters preceding the date of the claim, shall have met the following requirements:

1. Established 20 base weeks as defined at N.J.S.A. 43:21-19(t)(3) as an amount equal to 20 times the State minimum hourly wage;

2. If the individual has not met the above requirement in (a)1 above, he or she must have earned an amount equal to 1,000 times the State minimum hourly wage[.]

[N.J.A.C. 12:17-5.1(a)(1)-(2).]

alternative, that workers' compensation temporary disability benefits should constitute "wages" under the statute.

The statute defines wages as "remuneration paid by employers for employment." N.J.S.A. 43:21-19(o). Remuneration is defined as "all compensation for personal services, including commission and bonuses and the cash value of all compensation in any medium other than cash." N.J.S.A. 43:21-19(p). Neither the definition of "wages" nor "remuneration" expressly references temporary disability benefits from workers' compensation. See N.J.S.A. 43:21-19(o)-(p). Also, in defining the "benefit year" for persons "who immediately preceding the benefit year [were] subject to . . . the workers' compensation law," the Legislature expressly limited its applicability to a "period of disability . . . not longer than two years." N.J.S.A. 43:21-19(c)(3).


"To ascertain legislative intent, we begin with the statute's plain language and give terms their ordinary meaning." State v. S.B., __ N.J. __, __ (2017) (slip op. at 6) (citing DiProspero v. Penn, 183 N.J. 477, 492 (2005)). Furthermore, "[w]hen the Legislature sets out to define a specific term, 'the courts are bound by that definition.'" Ibid. (quoting Febbi v. Bd. of Review, 35 N.J. 601, 606 (1961)). We "consider extrinsic interpretative aids" when a statute is "ambiguous," but in the absence of ambiguity, "[i]t is not our function to rewrite a

plainly written statute or to presume that the Legislature meant something other than what it conveyed in its clearly expressed language." Ibid. (quoting Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012)) (other citations omitted).

Here, the statutory definition of wages and remuneration do not include workers' compensation benefits, and the alternative base years are limited to persons receiving workers' compensation for fewer than two years. We cannot to rewrite these statutes. The petitioner has the burden of showing an entitlement to benefits. Brady, supra, 152 N.J. at 218. In following the statutory language, the Board's decision was not arbitrary, capricious or unreasonable.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION