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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4455-15T4

DOROTHY MOORE,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR, and
BERGEN REGIONAL MEDICAL
CENTER LP,

Respondents.

Submitted June 7, 2017 – Decided August 25, 2017

Before Judges Simonelli and Gooden Brown.

On appeal from the Board of Review, Department
of Labor, Docket No. 077,190.

Dorothy Moore, appellant pro se.

Christopher S. Porrino, Attorney General,
attorney for respondent Board of Review
(Melissa Dutton Schaffer, Assistant Attorney
General, of counsel; Elizabeth A. Davies,
Deputy Attorney General, on the brief).

Respondent Bergen Regional Medical Center LP
has not filed a brief.

PER CURIAM

Appellant Dorothy Moore appeals from the May 3, 2016 final agency decision of respondent Board of Review (Board) affirming the January 21, 2016 decision of the Appeal Tribunal (Tribunal). The Tribunal determined that Moore was disqualified for unemployment benefits pursuant to N.J.S.A. 43:21-5(a) because she left work at Bergen Regional Medical Center, LP (Bergen Regional) "voluntarily without good cause attributable to the work." We remand to allow the Board to determine whether the police report submitted to support her claim for an exemption under N.J.S.A. 43:21-5(j) was sufficient documentation as required under N.J.S.A. 43:21-5(j)(2).

I.

We derive the following facts from the record. Moore worked for Bergen Regional as a patients account management representative from April 24, 2006 until September 25, 2015, when she resigned her position and moved out of state. After moving, Moore filed for unemployment benefits on November 1, 2015, and submitted a total of four job applications since filing for benefits, ultimately deciding to retire at age sixty-eight.

The Deputy for the Director of the Division of Unemployment Insurance denied Moore's application for unemployment benefits on December 3, 2015, on the ground that Moore left work voluntarily without "good cause attributable to the work." Moore appealed to

the Tribunal on December 9, 2015 and participated in the telephonic hearing conducted on January 12, 2016. At the telephonic hearing, Moore testified that "on September 28th, in the middle of the night" she, her son and her grandchildren "packed up and . . . left [her] home" because her grandchildren's mother made "death threats" against her and her family.

According to Moore, although the children's mother had never resided with her on a permanent basis, before the children were born, she lived with her for "a little more than a year off and on." Moore testified that her son lived with her and was awarded custody of the two children on June 24, 2013. According to Moore, they reported the threats to the police and the case was under investigation by the Pennsylvania State Police. Although Moore testified that a copy of the police report had been sent to the unemployment office, she agreed to send another copy to the Tribunal examiner.

Relying on the fact that the children's mother never lived with Moore on a permanent basis, the Tribunal determined that Moore did not qualify for benefits under N.J.S.A. 43:21-5(j), which allows the payment of benefits to individuals who resign from their employment "due to circumstances directly resulting from the individual being a victim of domestic violence as defined in" N.J.S.A. 2C:25-19. In its decision, the Tribunal quoted the

pre-amendment definition of a "[v]ictim of domestic violence" contained in N.J.S.A. 2C:25-19(d) and determined that Moore did "not meet the qualifications of [t]he New Jersey Code [o]f Criminal Justice 2C:25-19(d) and [was] therefore not eligible for benefits under the statute."

The Tribunal affirmed the determination of the Deputy, concluding that because Moore "left work due to personal problems which were neither caused by her employer nor the result of the nature of the work itself[,]" Moore was disqualified under N.J.S.A. 43:21-5(a) as she "left work voluntarily without good cause attributable to such work." Moore filed a timely appeal to the Board. In a May 3, 2016 decision, the Board adopted the findings of the Tribunal and affirmed the Tribunal's decision on the basis of the record below. This appeal followed.

II.

Our review of an administrative agency decision is limited. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). "[I]n reviewing the factual findings made in an unemployment compensation proceeding, the test is not whether [we] would come to the same conclusion if the original determination was [ours] to make, but rather whether the factfinder could reasonably so conclude upon the proofs." Ibid. (quoting Charatan v. Bd. of Review, 200 N.J. Super. 74, 79 (App. Div. 1985)). "If the Board's factual findings

are supported 'by sufficient credible evidence, [we] are obliged to accept them.'" Ibid. (quoting Self v. Bd. of Review, 91 N.J. 453, 459 (1982)). We also give due regard to the agency's credibility findings. Logan v. Bd. of Review, 299 N.J. Super. 346, 348 (App. Div. 1997). "Unless . . . the agency's action was arbitrary, capricious, or unreasonable, the agency's ruling should not be disturbed." Brady, supra, 152 N.J. at 210.

Moreover, we "give considerable weight to a state agency's interpretation of a statutory scheme that the legislature has entrusted to the agency to administer." In re Election Law Enforcement Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010). "We will defer to an agency's interpretation of both a statute and implementing regulation, within the sphere of the agency's authority, unless the interpretation is 'plainly unreasonable.'" Ibid. (citation omitted). Although we "must give deference to the agency's findings of facts, and some deference to its 'interpretation of statutes and regulations within its implementing and enforcing responsibility,' we are 'in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue.'" Utley v. Bd. of Review, Dep't of Labor, 194 N.J. 534, 551 (2008) (citations omitted). "Thus, to the extent [the agency's] determination constitutes a

legal conclusion, we review it de novo." Lavezzi v. State, 219 N.J. 163, 172 (2014).

An individual is disqualified for unemployment 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). An employee who has left work voluntarily bears the burden of proving that he or she "did so with good cause attributable to work." Brady, supra, 152 N.J. at 218 (citation omitted); N.J.A.C. 12:17-9.1(c).

"While the statute does not define 'good cause,' our courts have construed the statute to mean 'cause sufficient to justify an employee's voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.'" Domenico v. Bd. of Review, 192 N.J. Super. 284, 287 (App. Div. 1983) (quoting Condo v. Bd. of Review, 158 N.J. Super. 172, 174 (App. Div. 1978)). Also, N.J.A.C. 12:17-9.1(b) defines "good cause attributable to such work" as "a reason related directly to the individual's employment, which was so compelling as to give the individual no choice but to leave the employment."

An employee who leaves work for good, but personal, reasons is not deemed to have left work voluntarily with good cause, Brady, supra, 152 N.J. at 213, and is subject to disqualification

under N.J.S.A. 43:21-5(a). Morgan v. Bd. of Review, 77 N.J. Super. 209, 214 (App. Div. 1962).

Mere 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. The decision to leave employment must be compelled by real, substantial and reasonable circumstances not imaginary, trifling and whimsical ones. . . . [I]t is the employee's responsibility to do what is necessary and reasonable in order to remain employed.

[Domenico, supra, 192 N.J. Super. at 288 (citations omitted).]

However, N.J.S.A. 43:21-5(j) provides an exception to an ineligibility determination for victims of domestic violence as follows:

Notwithstanding any other provisions of this chapter . . . , no otherwise eligible individual shall be denied benefits because the individual left work or was discharged due to circumstances resulting from the individual being a victim of domestic violence as defined in [N.J.S.A. 2C:25-19(c)]. . . .

For the purposes of this subsection . . . , the individual shall be treated as being a victim of domestic violence if the individual provides one or more of the following:

- (1) A restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;
- (2) A police record documenting the domestic violence;

(3) Documentation that the perpetrator of the domestic violence has been convicted of one or more of the offenses enumerated in [N.J.S.A. 2C:25-19];

(4) Medical documentation of the domestic violence;

(5) Certification from a certified Domestic Violence Specialist or the director of a designated domestic violence agency that the individual is a victim of domestic violence; or

(6) Other documentation or certification of the domestic violence provided by a social worker, member of the clergy, shelter worker or other professional who has assisted the individual in dealing with the domestic violence.

"Domestic violence" includes terroristic threats or "[a]ny other crime involving risk of death or serious bodily injury to a person protected under the 'Prevention of Domestic Violence Act[.]'" N.J.S.A. 2C:25-19(a). The recent amendments to the Act, which became effective August 10, 2015, expanded the protections afforded under the Act and expanded the definition of those protected under the Act by changing the phrase "former household member" to include a person subjected to domestic violence by any person who "was at any time a household member." See L. 2015, c. 98, § 2, eff. Aug. 10, 2015. Recently, we held that the new definition widened the net of cases falling within the Act's


jurisdiction. R.G. v. R.G., 449 N.J. Super. 208, 219-20 (App. Div. 2017).

Clearly, Moore qualifies as a victim of domestic violence under the current definition contained in N.J.S.A. 2C:25-19(d). However, applying the pre-amendment definition, the Board concluded that Moore did "not meet the requirements laid out to be classified as a 'victim of domestic violence'" because she testified that "the mother of her grandchildren had never had a permanent residence with her." We conclude the Board misinterpreted the Act when it found that Moore did not qualify as a victim of domestic violence. Because Moore qualifies as a victim of domestic violence, as she had been a household member with her grandchildren's mother, the issue then becomes whether the police report submitted to support her claim was sufficient documentation as required under N.J.S.A. 43:21-5(j)(2). Because the Board did not address that issue, a remand is warranted for the Board to develop the record further and reconsider Moore's eligibility for unemployment benefits.¹

¹ Noting that it was "academic," the Tribunal also determined that Moore's "work search since filing her claim for benefits [was] not active as required by unemployment law to avoid an ineligibility" determination. Because this determination was not the primary basis for the Board's decision, we take no position on the impact that such a determination would have on Moore's eligibility for benefits.

The Board's decision is vacated and the matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION