

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
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-4579-15T1

RYAN HAKIM,

Appellant,

v.

BOARD OF REVIEW and TWO
GUYS CATERING, LLC,

Respondents.

Submitted December 13, 2017 — Decided December 29, 2017

Before Judges Nugent and Geiger.

On appeal from the Board of Review, Department
of Labor, Docket No. 079,991.

Bell, Shivas & Fasolo, PC, attorneys for
appellant (Joseph J. Bell and Brian C.
Laskiewicz, on the briefs).

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

Respondent Two Guys Catering, LLC, has not
filed a brief.

PER CURIAM

Appellant Ryan Hakim (claimant) appeals from the Board of Review's April 26, 2016 final agency decision rejecting his claim for unemployment benefits. The Board upheld the Appeal Tribunal's decision that claimant was ineligible for unemployment benefits because he voluntarily left his job without good cause attributable to his work. We affirm.

Two Guys Catering, LLC, trading as The Pantry, employed claimant as its manager from October 5, 2014 through October 3, 2015.¹ When his employment with The Pantry ended, claimant applied for unemployment benefits. The Deputy Director denied his claim, finding that he left work voluntarily when he walked out following an argument with the owner.

Claimant filed an administrative appeal. Following a hearing, the Appeals Examiner also determined claimant was ineligible for unemployment benefits because he voluntarily left his job without good cause attributable to his work. Claimant appealed to the Board, which affirmed the Appeal Tribunal's decision. This appeal followed.

During the hearing before the Appeal Tribunal, claimant explained the reason he left work:

We had a staff meeting. Me, [the owner] and another employee and we were going over some

¹ The record contains various dates for claimant ranging from October 2 through October 5, 2015.

things we had some concerns about and [the owner] didn't like me to have a say regarding the business, the hours changing and certain other things of the business. He told me to get out. He told me I was no longer welcome there and I left.

Claimant also testified that he had received no written or verbal warnings during the course of his employment. He gave no other testimony about his reason for leaving, and he called no other witnesses.

The owner testified to a different version of what took place at the meeting and the reason claimant left work:

Because we called him out on some of his laziness and he didn't like that and he ripped his shirt off and walked out the door. I texted him and asked [if he] was coming back to work. I got no response. Two days later he came in and he told me he wasn't happy working here.

After hearing the owner testify, claimant testified again. He denied walking out and reiterated that the owner told him to get out, he was no longer welcome there. Claimant acknowledged the owner sent him a text message the next day and further acknowledged he returned two days later and said he was not happy. Claimant explained that he returned "after [being] attacked for [his] laziness." Claimant reiterated the owner told him not to come back. He added, "I wouldn't want to go back to a place where I wasn't welcome to."

In reply, the owner denied ever telling claimant not to come back. The owner testified, "[h]is job was here. He informed me he wasn't happy working here." The Appeals Examiner resolved the disputed testimony against claimant. The Appeals Examiner found "claimant voluntarily left his job when he became upset because the owner mentioned his laziness. The owner['s] intention was not to terminate employment. The claimant chose to walk out." The Appeals Examiner further determined there was no evidence presented in the case that claimant's termination was imminent, and the owner's discussing claimant's laziness "was not so severe to cause him to leave employment to become unemployed."

The Appeals Examiner concluded:

The burden of proof is on the claimant to establish good cause attributable to the work for leaving. The reason for leaving must relate directly to his employment, which was so compelling as to give him no choice but to leave his employment. That burden has not been met.

The central theme of claimant's appeal is "[t]he Appeal Tribunal and Board of Review failed to give appropriate weight to [claimant's] testimony clearly establishing that he did not voluntarily leave employment, which directly contradicts any claim by the [e]mployer to the contrary." Relying on this assertion as a factual predicate, claimant reasons that "[s]ince [his] departure from . . . employment was involuntarily based upon

circumstances where he was clearly not welcome on the premises, and directly attributable to the actions of the [e]mployer, the decisions . . . to disqualify [claimant] from receiving unemployment benefits are erroneous and should be reversed."

Alternatively, claimant argues this matter should be remanded because the hearing was incomplete. Claimant cites the references in the record to another witness and an email and asserts that neither the Appeals Tribunal nor the Board "made a request or demand for the production of such evidence."

The scope of our review of the Board's final decision is limited. See In re Stallworth, 208 N.J. 182, 194 (2011). We will not disturb the Board's ruling unless it is arbitrary, capricious, or unreasonable. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). We accord a "strong presumption of reasonableness" to the agency's exercise of its statutorily delegated responsibilities. City of Newark v. Nat. Res. Council, 82 N.J. 530, 539, (1980). The burden of showing that the agency's action was arbitrary, unreasonable, or capricious rests upon the appellant. See Barone v. Dep't of Human Servs., 210 N.J. Super. 276, 285 (App. Div. 1986), aff'd, 107 N.J. 355 (1987).

When we "review[] 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." Brady, 152 N.J. at 210 (quoting Charatan v. Bd. of Review, 200 N.J. Super. 74, 79 (App. Div. 1985)). We "must . . . give due regard to the opportunity of the one who heard the witnesses to judge their credibility." Logan v. Bd. of Review, 299 N.J. Super. 346, 348 (App. Div. 1997) (citation omitted). For these reasons, "[i]f the factual findings of an administrative agency are supported by sufficient credible evidence, [we] are obliged to accept them." Self v. Bd. of Review, 91 N.J. 453, 459 (1982) (citation omitted). For the same reasons, we also give due regard to the agency's credibility determinations. Logan, 299 N.J. Super. at 348 (citing Jackson v. Concord Co., 54 N.J. 113, 117 (1969)).

A claimant is disqualified for unemployment benefits if he or she left work "voluntarily without good cause attributable to such work[.]" N.J.S.A. 43:21-5(a). Personal reasons, no matter how compelling they may be, do not establish "good cause." Utley v. Bd. of Review, 194 N.J. 534, 544 (2008). A claimant has the burden of proving such good cause attributable to the work. Brady, 152 N.J. at 218.

In the case before us, claimant and his employer presented contrasting versions of the circumstances that caused claimant to leave his job. The disputed facts and credibility determinations

were resolved in favor of the employer. Had they been determined to be in a state of equipoise, claimant would have nonetheless failed to sustain his burden of proving that he left work as the result of good cause attributable to the work.

Claimant's argument that the case should be remanded is unpersuasive. He has offered no explanation as to why he did not present at the hearing the evidence he now seeks to present. He certainly has not suggested that he was somehow prevented from presenting such evidence.

Claimant's remaining arguments are without sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E). The Board's decision is supported by sufficient credible evidence on the record as a whole. R. 2:11-3(e)(1)(D).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION