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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5260-15T2

MARGARET CARR,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR,
AND ELITE CARE NJ, LLC
a/k/a NEW HORIZONS
PARTIAL CARE PROGRAM,

Respondents.

Submitted September 14, 2017 – Decided October 11, 2017

Before Judges Haas, Rothstadt and Gooden
Brown.

On appeal from the Board of Review, Department
of Labor, Docket No. 077,606.

Margaret Carr, appellant pro se.

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

Respondent Elite Care NJ, LLC has not filed a
brief.

PER CURIAM

Appellant Margaret Carr appeals from the April 13, 2016 final decision of the Board of Review ("Board") affirming the Appeal Tribunal's determination that she was disqualified for unemployment compensation benefits under N.J.S.A. 43:21-5(a) because she left work voluntarily without good cause attributable to the work. We affirm.

We discern the following facts from the record. Carr was employed by Elite Care NJ, LLC as a certified alcohol and drug counselor from August 2014 through November 14, 2015. Initially Carr was supervised by a licensed clinical social worker as required by regulation. See N.J.A.C. 13:34C-6.3(a)(3). In 2015, her supervisor was replaced by an individual who did not hold the required certification. Carr determined that she was not legally permitted to perform her job functions without a properly certified supervisor and that doing so would jeopardize her own state certification.

Carr brought her concerns to Elite's attention, but it did not take any action toward replacing the supervisor. After raising her concerns with Elite, problems arose between Carr and her supervisor. Carr ultimately resigned on November 14, 2015 because of Elite's failure to remedy the situation. Prior to her resignation, Carr did not lodge any complaints with the State

Alcohol and Drug Counselor Committee, the entity responsible for issuing certifications to alcohol and drug counselors and overseeing the profession. See N.J.S.A. 45:2D-1 to -12; see also N.J.A.C. 13:34C-1.1 to -6.4.

Carr applied for unemployment benefits in November 2015, and was notified on December 17, 2015, that she was ineligible for benefits because she left work voluntarily without good cause attributable to the work. Carr appealed the determination to the Appeal Tribunal, which conducted a telephonic hearing and found that she was ineligible for benefits. In its January 20, 2016 written decision, the Appeal Tribunal found that Carr left her job voluntarily without good cause attributable to the work because she failed to demonstrate that there was any merit to her belief that her certification was ever in jeopardy or that the tension between Carr and the uncertified supervisor created an adverse condition that justified Carr's resignation.

Carr appealed the Appeal Tribunal's determination and, in its April 13, 2016 decision, the Board affirmed. In its written decision, the Board noted that it considered a post-hearing submission that Carr made and found that it further supported its conclusion that the Appeal Tribunal's decision was correct. The Board stated:

On the basis of the record below, we agree with the decision reached. Additionally, on appeal to the Board of Review, the claimant presents a copy of a complaint she filed on March 18, 2016 with the Division of Consumer Affairs State Board of Social Work Examiners concerning this situation. The complaint demonstrates that the claimant did not take reasonable steps to resolve her grievances prior to leaving work. The fact that the claimant's license could have been revoked due to the lack of proper supervision remains a mere speculation; there has been no relevant evidence presented to establish it as a factual matter.

This appeal followed.

Before us, Carr contends the Board erred in finding she was disqualified for benefits pursuant to N.J.S.A. 43:21-5(a). We disagree.

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)). Only if the Board's "action was arbitrary, capricious, or unreasonable" should it be disturbed. Ibid.

The New Jersey Unemployment Compensation Law states an individual shall be disqualified for benefits:

For 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, which may include employment for the federal government, and has earned in employment at least ten times the individual's weekly benefit rate, as determined in each case.

[N.J.S.A. 43:21-5(a).]

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."

Appellant admitted during the hearing that she left her job voluntarily. The crux of her claim on appeal is that she left voluntarily with good cause—specifically, that Elite's failure to insure that her supervisor be "a professional who possess a clinical license . . . constitut[ed] good cause attributable to the work." We disagree.

As a preliminary matter, Carr had the burden of proof in establishing that she left her job for good cause attributable to

her work. Brady, supra, 152 N.J. at 218. Carr was also obligated to establish that she did everything "necessary and reasonable in order to remain employed." Domenico v. Bd. of Review, 192 N.J. Super. 284, 288 (App. Div. 1983). That burden can be satisfied by evidence that she was required to engage in unethical or illegal practices. See Casciano v. Bd. of Review, 300 N.J. Super. 570, 576-77 (App. Div. 1997) (finding the employee was justified in resigning to avoid participating in the employer's "immoral if not illegal conduct").

In this case, the Appeal Tribunal found, and the Board agreed, that Carr's resignation was due to her incorrect interpretation of the applicable regulations and her failure to take any action to protect her employment prior to resigning. These findings are supported by credible evidence in the record. Specifically, Carr failed to seek any determination by the regulatory committee that her concerns about her employer's actions were legitimate or that her own certification was in jeopardy. The applicable regulations make provision for specific actions to be taken to correct any valid "inadequacies" after the regulatory committee receives notification of an issue with a certified drug and alcohol counselor's supervision. See N.J.A.C. 13:34C-6.4(c).

Under the circumstances, we agree that Carr did not utilize all of the resources available to her, such as reporting her

concerns to the proper regulating authority, in order to protect her position. We discern no basis for disturbing the Board's determination, as Carr has not demonstrated that it was 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