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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-5474-15T1

KAREN JOHNSON,

Appellant,

v.

BOARD OF REVIEW, DEPARTMENT OF  
LABOR, EQUINOX MANAGEMENT GROUP,  
INC., and STARR COMPANY,

Respondents.

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Submitted June 19, 2017 — Decided June 26, 2017

Before Judges Yannotti and Haas.

On appeal from Board of Review, Department of  
Labor and Workforce Development, Docket No.  
085,240.

Karen Johnson, appellant pro se.

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

Respondents Equinox Management Group, Inc. and  
Starr Company have not filed briefs.

PER CURIAM

Karen Johnson appeals from a final decision of the Board of Review (Board), dated June 20, 2016, which upheld a determination of the Appeal Tribunal, finding that Johnson was disqualified from unemployment compensation benefits for the period from January 31, 2016, to February 13, 2016, because she failed to comply with the reporting requirements in N.J.A.C. 12:17-4.2(a). We affirm.

Johnson was employed by Equinox Management Group (Equinox) as a senior underwriter/project and program manager. On February 2, 2016, Johnson gave Equinox written notice of her intent to resign her position on February 16, 2016. It appears that Johnson had accepted a job with Starr Company (Starr), one of Equinox's competitors, and she would be starting work for Starr on February 16, 2016.

Equinox has a policy that prohibits employees from working their two final weeks if they are leaving the company to work for a competitor. Therefore, Equinox terminated Johnson, effective February 2, 2016. Johnson did not return to work at Equinox after that date.

Johnson alleges that she first learned she had been terminated on February 9, 2016. The following day, Equinox offered to give Johnson two weeks of severance pay if she executed a separation agreement, which stated that she was not going to work for a competitor. Johnson began to work for Starr on February 16, 2016.

Johnson's attorney later advised her not to sign the severance agreement. On February 21, 2016, Johnson filed a claim for unemployment compensation benefits.

On March 22, 2016, a deputy director of unemployment insurance in the Department of Labor and Workforce Development found Johnson ineligible for benefits pursuant to N.J.S.A. 43:21-5(a) because she left work voluntarily without good cause attributable to the work. Johnson appealed that determination to the Appeal Tribunal, which conducted a hearing in the matter on April 26, 2016.

The Appeal Tribunal issued a decision, which was mailed on April 28, 2016, reversing the deputy's determination. The Appeal Tribunal rejected the deputy's finding that Johnson left work voluntarily, but found that she was disqualified from receiving unemployment benefits because at the time she submitted her claim, she was working for a new employer. Johnson appealed the Appeal Tribunal's decision to the Board.

The Board thereafter affirmed the Appeal Tribunal's findings of fact, but modified its decision. The Board determined that Johnson was not eligible for benefits for the week of January 31, 2016, to February 13, 2016, because she did not comply with the reporting requirements in N.J.A.C. 12:17-4.2(a). The Board noted that Johnson did not file her claim for benefits until February 21, 2016. The Board refused to allow Johnson to backdate the claim,

noting that she made no attempt to file the claim prior to February 21, 2016. This appeal followed.

On appeal, Johnson argues that the Board should have awarded her unemployment benefits for the period from February 3, 2016, to February 15, 2016. She contends that she did not know until February 21, 2016, that she would not be receiving two weeks of severance pay. Johnson therefore claims she was unable to submit a claim for unemployment benefits before that date.

The scope of our review in an appeal from a final determination of an administrative agency is strictly limited. We will not disturb an agency's decision unless it is shown to be arbitrary, capricious, or unreasonable. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997) (citing In re Warren, 117 N.J. 295, 296 (1989)). We can only intervene "in those rare circumstances in which an agency action is clearly inconsistent with its statutory mission or with other State policy." Ibid. (quoting George Harms Constr. v. N.J. Tpk. Auth., 137 N.J. 8, 27 (1994)).

Furthermore, "[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. (alteration in

original) (quoting Charatan v. Bd. of Review, 200 N.J. Super. 74, 79 (App. Div. 1985)).

Here, the Board found that Johnson was disqualified from receiving benefits for the period from January 31, 2016, to February 13, 2016, because she did not comply with the reporting requirements of N.J.A.C. 12:17-4.2(a). The regulation provides that "[a]n individual shall telephone a Reemployment Call Center or contact the Division via an Internet application to file an initial claim for benefits, unless another method of filing is prescribed by the Division." N.J.A.C. 12:17-4.2(a). The regulation further provides that "[t]he effective date of an initial claim for benefits is the Sunday of the week in which the claimant first reports to claim benefits." Ibid.

Johnson concedes that she did not report her claim for unemployment benefits until February 21, 2016. Although Johnson asserts she did not know she would not be receiving two weeks of severance pay until February 21, 2016, her testimony before the Appeal Tribunal shows that she was terminated on February 2, 2016. She stated that persons at Equinox "walked me out the door and said good luck[, ] good-bye."


Furthermore, Johnson knew on February 9, 2016, that she would not be paid for the two weeks after she gave notice. On February 10, 2016, Johnson was offered the opportunity to be paid for those

two weeks, but she had to sign an agreement indicating she would not work for one of Equinox's competitors. Johnson never signed that agreement, and she did not file a claim until February 21, 2016.

Thus, there is sufficient credible evidence in the record to support the Board's determination that Johnson was disqualified from receiving benefits from January 31, 2016, to February 13, 2016. Johnson did not report her initial claim in the manner required by N.J.A.C. 12:17-4.2(a) before February 21, 2016, and she failed to establish good cause for failing to submit her claim before that date.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION