

**NOT FOR PUBLICATION WITHOUT THE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-5689-14T1

LYDIA WAGNER,

Appellant,

v.

BOARD OF REVIEW, DEPARTMENT
OF LABOR AND WORKFORCE
DEVELOPMENT, and UNITED STATES
POSTAL SERVICE,

Respondents.

Argued October 30, 2017 — Decided November 28, 2017

Before Judges Whipple and Rose.

On appeal from the Board of Review, Department of Labor and Workforce Development, Docket No. 442,214.

Lydia Wagner, appellant, argued the cause pro se.

Christopher Weber, Deputy Attorney General, argued the cause for respondent Board of Review (Christopher S. Porrino, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Adam C. Verone, Deputy Attorney General, on the brief).

Respondent United States Postal Service has not filed a brief.

PER CURIAM

Claimant Lydia Wagner appeals from the June 15, 2015 final decision of the Board of Review denying her request, pursuant to N.J.A.C. 12:17-14.2, for a waiver of recovery of unemployment benefits she erroneously received when she was ineligible. We affirm.

The record reflects Wagner was employed as a clerk with the United States Postal Service from July 7, 1984 until May 31, 2009, when she accepted an early retirement package. On June 9, 2009, Wagner filed for unemployment benefits. Wagner received unemployment benefits from June 13, 2009 through May 29, 2010. In December 2011, the Deputy to the Director of the Division of Unemployment Insurance determined Wagner was ineligible for benefits, having "left work voluntarily without good cause attributable to such work" pursuant to N.J.S.A. 43:21-5(a).

Wagner administratively appealed the Deputy's determination to the Appeal Tribunal. Following a hearing in May 2012, at which Wagner participated with counsel, the Tribunal affirmed the Deputy's determination. Wagner administratively appealed the Tribunal's determination to the Board of Review. In October 2012, the Board issued a decision upholding the Tribunal's ruling

disqualifying Wagner for benefits and finding she was responsible for refunding the benefits received in the amount of \$23,970. Wagner did not appeal the Board's decision to this court.¹ See R. 2:4-1(b) (requiring appeals from final agency decisions to be filed "within 45 days from the date of service of the decision or notice of the action taken.").

The Board referred Wagner's separate request for a waiver of the refund to the Director of the Division of Unemployment Insurance. In September 2013, the Director denied Wagner's request for a waiver. Wagner administratively appealed the Director's denial to the Appeal Tribunal. Wagner participated in the hearing with counsel. In January 2014, the Tribunal affirmed the Director's determination.

Wagner administratively appealed and the Board then remanded to the Tribunal for an explanation as to why the Bureau of Benefit Payment Control denied Wagner's request for a waiver. Wagner participated in this hearing with counsel. In sum, the Bureau's investigator testified that Wagner's financial disclosure did not demonstrate a hardship, supporting the Bureau's determination that

¹ Wagner's chief argument on appeal is that she left employment with good cause because the Postal Service was downsizing and it offered her early retirement. Because Wagner did not appeal the Board's decision disqualifying her benefits, that issue is not properly before us. Consequently, we do not address the portions of Wagner's brief contesting the merits.

Wagner had sufficient income to meet her needs and refund the benefits. After the hearing, the Tribunal denied Wagner's request for a waiver, finding "the amount overpaid is not patently contrary to principles of equity, in accordance with N.J.A.C. 12:17-14.2."

Wagner administratively appealed the Tribunal's decision on her waiver request. In a final decision dated June 15, 2015, the Board affirmed the Tribunal's determination. This appeal followed.

Our scope of review of an agency decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011) (citing Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980)). In challenging an agency conclusion, the claimant carries a substantial burden of persuasion, and the determination of the administrative agency carries a presumption of correctness. Gloucester Cty. Welfare Bd. v. N.J. Civil Serv. Comm'n, 93 N.J. 384, 390-91 (1983); McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002). We also accord substantial deference to the agency's interpretation of a statute it is charged with enforcing. Bd. of Educ. of Neptune v. Neptune Twp. Educ. Ass'n, 144 N.J. 16, 31 (1996).

Further, "[w]e are obliged to defer to the Board [of Review] when its factual findings are based on sufficient credible evidence in the record." Lourdes Med. Ctr. of Burlington Cty. v. Bd. of

Review, 197 N.J. 339, 367 (2009) (internal quotation marks and citations omitted). We overturn an agency determination only if it is arbitrary, capricious, unreasonable, unsupported by substantial credible evidence as a whole, or inconsistent with the enabling statute or legislative policy. Brady v. Bd. of Review, 152 N.J. 197, 210-11 (1997).

Once a person has been disqualified from receiving unemployment benefits, the unemployment compensation statute generally requires repayment of any benefits received. N.J.S.A. 43:21-16(d)(1). Recoupment of "unemployment benefits received by an individual who, for any reason, regardless of good faith, was not actually entitled to those benefits[,]" protects the public and maintains a fund for those adversely affected by unemployment, rather than those who voluntarily choose to leave the workforce. Bannan v. Bd. of Review, 299 N.J. Super. 671, 674 (App. Div. 1997). "The public interest clearly is not served . . . by the failure to recoup benefits erroneously paid to an unentitled recipient, however blameless he or she may have been." Ibid.

Nonetheless, the Director may authorize a repayment waiver or payment plan if the claimant is deceased, disabled or where "the recovery of the overpayment would be 'patently contrary to the principles of equity.'" N.J.A.C. 12:17-14.2(d). In order to determine whether recovery would be "patently contrary to the

principles of equity," the Director must determine "whether the terms of a reasonable repayment schedule would result in economic hardship to the claimant." Ibid.

Here, the Board duly considered claimant's waiver request and determined she was not entitled to such relief. Wagner's claim of economic hardship is not adequately supported by her financial disclosure to the Bureau. Nor has Wagner demonstrated that repayment would be "patently contrary" to principles of equity. We are satisfied, therefore, that the Board's determination was fully supported by the facts and applicable law.

We recognize Wagner did not act in bad faith in receiving the erroneously paid benefits, but she is still required to repay them. N.J.S.A. 43:21-16(d)(1). She has failed to satisfy an economic hardship, or any other, ground for a waiver pursuant to N.J.A.C. 12:17-14.2(d). We are compelled to affirm the agency decision unless it is arbitrary, capricious or unreasonable. Barry v. Arrow Pontiac, Inc., 100 N.J. 57, 71 (1985). We discern no reason to interfere with the Board's determination. We do not, however, foreclose the agency from adopting a repayment plan to enable Wagner to repay the balance due in reasonable installments.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION