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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-3361-16T4

KEVIN O'LAUGHLIN,

Appellant,

v.

BOARD OF REVIEW, DEPARTMENT
OF LABOR and ROBERT WOOD
JOHNSON UNIVERSITY HOSPITAL,

Respondents.

Submitted February 26, 2018 – Decided March 16, 2018

Before Judges Messano and Vernoia.

On appeal from the Board of Review, Department
of Labor and Workforce Development, Docket No.
107, 283.

Kevin O'Laughlin, appellant pro se.

Gurbir S. Grewal, Attorney General, attorney
for respondent Board of Review (Melissa Dutton
Schaffer, Assistant Attorney General, of
counsel; Jessica M. Saxon, Deputy Attorney
General, on the brief).

Apruzzese, McDermott, Mastro & Murphy, PC,
attorneys for respondent Robert Wood Johnson
University Hospital (Timothy D. Cedrone, on
the brief).

PER CURIAM

Claimant Kevin O'Laughlin challenges a Board of Review (Board) decision affirming an Appeal Tribunal determination disqualifying him from receiving unemployment compensation benefits from October 7, 2015. We affirm.

The record shows claimant was employed by Robert Wood Johnson University Hospital, and last worked on July 9, 2015, when he was placed on an indeterminate furlough. Claimant was incarcerated from July 12 to July 14, 2015, and was in an inpatient drug treatment program from July 15 until August 19, 2015.

In a September 23, 2015 letter to the hospital, claimant submitted what he acknowledges was a "voluntary resignation" of his employment effective October 7, 2015. Claimant resigned to accept employment with the Springfield Surgical Center, and commenced employment there on October 10, 2015. Following a subsequent admission into an inpatient drug treatment program, the Springfield Surgical Center terminated claimant's employment on December 4, 2015.

Ten months later, claimant applied for unemployment compensation benefits. The Deputy Director initially determined claimant was disqualified from benefits from October 2, 2016. The hospital appealed the determination, arguing claimant voluntarily

resigned one year earlier on October 7, 2015, and should be disqualified from that date.

The Appeal Tribunal conducted a hearing on January 19, 2017, but claimant opted not to participate. The hospital presented testimony that defendant voluntarily resigned from his employment effective October 7, 2015.

The Appeal Tribunal determined that on September 23, 2015, claimant "tendered his written resignation to the [hospital] to be effective as of [October 7, 2015]." The Appeal Tribunal determined there was no evidence presented that claimant left work voluntarily with good cause attributable to the work and, as a result, he was "disqualified for benefits under N.J.S.A. 43:21-5(a), as of [October 4, 2015]."

In its final decision, the Board noted claimant's failure to appear at the Appeal Tribunal hearing. The Board considered the record presented to the Appeal Tribunal, and affirmed its decision. This appeal followed.

On appeal, claimant presents the following argument for our consideration:

THE [CLAIMANT] ALLEGES THAT THE [HOSPITAL] TERMINATED HIS EMPLOYMENT FOR NO GOOD CAUSE WHILE THE [CLAIMANT] MAINTAINS AND CLEARLY ESTABLISHES LATER IN [HIS] ARGUMENT THAT THERE WAS ABSOLUTELY GOOD REASON FOR HIS RESIGNATION.

Our review of decisions by administrative agencies is limited, with claimants carrying a substantial burden of persuasion. In re Stallworth, 208 N.J. 182, 194 (2011); Brady v. Bd. of Review, 152 N.J. 197, 218 (1997). An agency's determination must be sustained "unless there is a clear showing . . . it [wa]s arbitrary, capricious, or unreasonable, or that it lack[ed] fair support in the record." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27-28 (2011) (quoting In re Herrmann, 192 N.J. 19, 27-28 (2007)). "[I]f substantial evidence supports the agency's decision, 'a court may not substitute its own judgment for the agency's even though the court might have reached a different result.'" In re Carter, 191 N.J. 474, 483 (2006) (citation omitted).

Having failed to participate in the Appeal Tribunal hearing, claimant's argument is based solely on factual assertions that find no support in the record. Claimant asserts for the first time on appeal that the Board erred because he resigned for good cause attributable to the work. We decline to consider claimant's argument because it was not raised below and does not involve jurisdictional or public interest concerns. Zaman v. Felton, 219 N.J. 199, 226-27 (2014); see also Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)) ("[O]ur appellate

courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest').

Under N.J.S.A. 43:21-5(a), a person is ineligible for unemployment benefits if he or she leaves work voluntarily, without good cause attributable to the work. 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." "The decision to leave employment must be compelled by real, substantial and reasonable circumstances not imaginary, trifling and whimsical ones." Domenico v. Bd. of Review, 192 N.J. Super. 284, 288 (App. Div. 1983). Further, "[m]ere 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." Ibid. (quoting Medwick v. Bd. of Review, 69 N.J. Super. 338, 345 (App. Div. 1961)).

The burden of proof rests with the employee to establish a right to collect unemployment benefits. Brady, 152 N.J. at 218. "[W]hen an employee leaves work voluntarily, he bears the burden to prove he did so with good cause attributable to work." Ibid.

The record supports the Board's determination claimant failed to sustain his burden of establishing an entitlement to unemployment benefits. Claimant did not participate in the hearing or present any evidence showing his resignation was for good cause attributable to the work. The record amply supports the Board's determination, and claimant makes no showing that the Board's decision was arbitrary, capricious or unreasonable. See Russo, 206 N.J. at 27.

To the extent we have not directly addressed any of claimant's contentions, we find they are without merit sufficient to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION