SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0200-20

KELLY A. KING,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR,
and DOLLAR TREE STORES,
INC.,

Respondents.

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Submitted March 30, 2022 – Decided April 27, 2022

Before Judges Gooden Brown and Gummer.

On appeal from the Board of Review, Department of Labor, Docket No. 204114.

Kelly A. King, appellant pro se.

Matthew J. Platkin, Acting Attorney General, attorney for respondent Board of Review (Donna Arons, Assistant Attorney General, of counsel; Mikhaeil Awad, Deputy Attorney General, on the brief).

PER CURIAM

The Board of Review of the New Jersey Department of Labor and Workforce Development affirmed a decision of the Department's Appeal Tribunal, disqualifying claimant Kelly A. King from receiving unemployment benefits under N.J.S.A 43:21-5(a). Claimant appeals the Board's decision, which we affirm.

Claimant was employed by Dollar Tree Stores, Inc. as a full-time store manager when she was terminated on December 24, 2019, due to attendance issues. Claimant applied for unemployment benefits. A deputy from the Department's Division of Unemployment Insurance disqualified claimant from receiving benefits, finding she had left her job voluntarily "due to various personal reasons," which did "not constitute good cause attributable to the work."

Claimant appealed the deputy's decision. During the Appeal Tribunal's hearing, claimant testified that in November 2019 she had advised the store's district manager Jose Ocasio and regional human-resources manager Jeff Billingsley she would be able to work only two days per week because she could not find childcare for her child. She testified they had approved her request and she had begun to work a reduced schedule the last week of November 2019. According to claimant, no one had told her she could not work a reduced

schedule until a December 15, 2019 text exchange she had with Ocasio. She texted Ocasio to ask why she was not on the work schedule for the upcoming week. Ocasio told her she was responsible as the store manager for putting herself on the schedule and she was expected to work six days per week. Claimant admitted Ocasio had offered her as an accommodation the assistant store manager position, which would have enabled her to work a reduced schedule, but she had declined that offer. She also admitted to calling out of work during the month of December and to not providing a requested doctor's note. Claimant testified that on December 24, 2019, Billingsley had advised her she was being terminated because she had had "too many call outs." She denied she had voluntarily quit her job and insisted she had been fired.

Ocasio also testified at the hearing. He acknowledged claimant had told him she would be able to work only two days per week but testified her request to work a reduced schedule was never approved. He stated he had asked claimant how long she would need to work a reduced schedule, but claimant would not give him a timeline. Ocasio told claimant the store would not be able to keep her as store manager if she could work only two days per week. He offered claimant the assistant store manager position as an accommodation for her to work a reduced schedule, but she declined that offer. According to

Ocasio, the last time claimant worked at the store was the last week of November 2019. Ocasio testified claimant had worked only two days that week and, thereafter, had called out of work – because she had to care for her mother or her child, she had been ill or had not felt well, or she overslept – until her termination. According to Ocasio, Billingsley advised him on December 24, 2019, claimant had been terminated due to "ongoing attendance issue[s]" and because she had not "return[ed] to work."

After the hearing, the Tribunal issued a written decision, making extensive factual findings and affirming the deputy's decision. The Tribunal found Ocasio's testimony "to be more credible" than claimant's and rejected claimant's contention she had received approval to work in a part-time capacity. The Tribunal found "[s]ubstantial evidence provided during the hearing established that the claimant effectively resigned from her position . . . by failing to return to work after late [November] 2019 and failing to be available to work her regular full-time hours." The Tribunal determined, pursuant to N.J.S.A. 43:21-5(a), claimant was disqualified for benefits because her reason for not being able to work full-time hours due to lack of childcare was "a purely personal reason," citing N.J.A.C 12:17-9.1(e)(2), and found claimant had "left work voluntarily without good cause attributable to such work."

Claimant appealed the Tribunal's decision to the Board. The Board affirmed the decision.

On appeal, claimant contends she is entitled to benefits because she was terminated and did not leave work voluntarily. She maintains she was approved to work two days per week and asserts that she followed company policy whenever she called out of work.

The scope of our review of an administrative agency's final determination is strictly limited. Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997); see also Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) ("Judicial review of agency determinations is limited."). An agency's decision may not be disturbed on appeal unless it is arbitrary, capricious, unreasonable, or inconsistent with applicable law. Brady, 152 N.J. at 210. "If the Board's factual findings are supported 'by sufficient credible evidence, courts are obliged to accept them.'" Ibid. (quoting Self v. Bd. of Rev., 91 N.J. 453, 459 (1982)); see also McClain v. Bd. of Rev., 237 N.J. 445, 456 (2019). "[I]n reviewing the factual findings made in an unemployment compensation proceeding, the test is not whether an appellate court would come to the same conclusion if the original determination was its 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 Rev., 200 N.J. Super. 74, 79 (App. Div. 1985)); see also Futterman v. Bd. of Rev., 421 N.J. Super. 281, 287 (App. Div. 2011).

To avoid disqualification, claimant had the burden of establishing she had left work for "good cause attributable to work." Brady, 152 N.J. at 218; see also N.J.S.A. 43:21-5(a) (providing an employee who "has left work voluntarily without good cause attributable to such work" is disqualified from unemployment-compensation benefits). "Good cause attributable to such work" is defined in N.J.A.C. 12:17-9.1(b) 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." An employee has left work "voluntarily" within the meaning of the statute "only if 'the decision whether to go or to stay lay at the time with the worker alone.'" Lord v. Bd. of Rev., 425 N.J. Super. 187, 191 (App. Div. 2012) (quoting Campbell Soup Co. v. Bd. of Rev., 13 N.J. 431, 435 (1953)). Accordingly, an employee who leaves a job without a sufficient work-related reason is disqualified from receiving benefits. See Self, 91 N.J. at 457; see also Cottman v. Bd. of Rev., 454 N.J. Super. 166, 169-70 (App. Div. 2018) ("With few exceptions, leaving work for personal reasons unrelated to the work, no matter how reasonable, disqualifies an employee from receiving unemployment benefits."). N.J.A.C. 12:17-9.1(e) sets forth a list of

"reasons" for "[a]n individual's separation from employment" that "shall be reviewed as a voluntarily leaving work issue." The list includes "[c]are of children or other relatives." N.J.A.C. 12:17-9.1(e)(2).

Applying these principles, we perceive no error in the Board's decision to deny claimant benefits. Based on the evidence presented at the hearing, including Ocasio's testimony which the Tribunal found to be more credible, the Tribunal determined claimant's request for a reduced schedule had not been approved and she had failed to return to the store to work her regular full-time hours for at least three weeks. Accordingly, the Tribunal found claimant had "left work voluntarily without good cause attributable to such work." Cf. Espina v. Bd. of Rev., 402 N.J. Super. 87, 92-93 (App. Div. 2008) (reversing denial of benefits pursuant to N.J.A.C. 12:17-9.11(b) because claimant had been on approved family leave and was terminated when she had missed only one day of work after her leave ended). The Board adopted the Tribunal's finding, which was supported by substantial credible evidence in the record. Moreover, the Board's determination that claimant's reason for leaving work – care of a child – did not constitute good cause attributable to the work is consistent with the applicable law.

Affirmed.