SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2699-20

FRANCENA D. MASON-JEGEDE,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR
and THE CITY OF NEW YORK
PAYROLL ADMINISTRATION,

Respondents.

Submitted November 30, 2022 – Decided December 6, 2022

Before Judges Haas and DeAlmeida.

On appeal from the Board of Review, Division of Unemployment Insurance, Department of Labor and Workforce Development, Docket No. 230270.

Francena D. Mason-Jegede, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent Board of Review (Sookie Bae-Park, Assistant Attorney General, of counsel; Mikhaeil Awad, Deputy Attorney General, on the brief).

PER CURIAM

Appellant Francena Mason-Jegede appeals from the Board of Review's April 23, 2021 decision which upheld the reduction of her unemployment compensation benefits from $485 to $0 dollars per week because she was receiving a pension from a former employer. Because the Board misapplied the clear terms of the governing statute and regulations, we reverse and remand for a new determination of appellant's eligibility for benefits.

We begin by reviewing the law applicable to appellant's claim. N.J.S.A. 43:21-5a specifically addresses the situation where an individual who qualifies for unemployment benefits is receiving a pension. This statute provides in pertinent part:

> The amount of benefits payable to an individual for any week which begins in a period with respect to which such individual is receiving a governmental or other pension . . . which is based on the previous work of such individual shall be reduced, but not below zero, by an amount equal to the amount of such pension . . . which is reasonably attributable to such week; . . . provided further that . . . the Commissioner of Labor and Workforce Development may prescribe in regulations which are consistent with the federal Unemployment Tax Act any of the following:
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> a. The requirements of this section shall only apply in the case of a pension . . . under a plan maintained or contributed to by a base period or chargeable employer . . . .

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

As authorized by N.J.S.A. 43:21-5a, the Commissioner of Labor and Workforce Development has promulgated regulations consistent with the federal law. N.J.A.C. 12:17-8.1(a) states that "[w]hen a pension is received from a base period or chargeable employer, benefits shall be reduced if the pension . . . is under a plan maintained or contributed to by such employer." (emphasis added). In addition, N.J.A.C. 12:17-8.2(a)(1) states that if the pension is paid "under a plan to which the individual did not contribute, the weekly and maximum amount of benefits payable to the individual shall by reduced by an amount equal to the amount of the pension" received by the individual each week.

We have said that the purpose of the pension offset under N.J.S.A. 43:21-5a and the regulations is to prevent a retired person from receiving a pension benefit and an unemployment benefit based on the same work. Giesler v. Bd. of Review, 315 N.J. Super. 28, 32 (App. Div. 1998). Central to the limitation imposed by the statutory scheme is the source of the pension funds. The deduction will not apply if the pension benefit is received from an employer other than the one who is chargeable with the unemployment claim. N.J.S.A. 43:21-5a(a).

We now turn to the facts underlying appellant's claim for unemployment benefits. Appellant worked for thirty-two years as a senior investigative probation officer for the City of New York. She voluntarily retired from this position on May 2, 2019. At that time, the City began paying appellant $2,387.05 per month in pension benefits.[1] During her employment, appellant did not contribute to the pension and it was funded solely by the City.

Sometime later, appellant obtained new employment as a substitute teacher in New Jersey schools through Kelly Services, an employment agency. Appellant worked in this position until the schools closed because of the Covid-19 pandemic. At that time, she lost her job.

On April 12, 2020, appellant filed a claim for unemployment benefits based upon her work as a substitute teacher. The Division of Unemployment Insurance found appellant eligible for benefits in the amount of $485 per week. Appellant ultimately received $6,794 in benefits on her claim for the period between April 18, 2020 and July 25, 2020.

However, on August 25, 2020, a Division deputy mailed appellant a notice stating that the Division had determined that her $485 weekly unemployment benefit should be offset by the $555 per week pension payment she received

[1] Appellant's prorated weekly pension payment was $555.

from her prior employer, the City of New York. As a result, the Division reduced appellant's weekly unemployment benefit to $0. The Division also ordered appellant to refund the $6,794 in benefits it had already paid her.

Appellant filed a timely appeal from this determination to the Appeal Tribunal. A hearing examiner conducted a telephone hearing on December 20, 2020. At the hearing, the examiner questioned appellant about her prior employment with the City and the pension she received after she retired. The examiner asked no questions about appellant's employment with Kelly Services as a substitute teacher.

When the examiner concluded his brief questioning, appellant explained that she was not seeking benefits related to her employment as a senior investigative probation officer for the City, a position from which she had retired almost a year prior to filing her claim. Rather, she told the examiner her claim was based upon her employment with Kelly Services. Appellant also testified she previously sent the Division information concerning the income she earned as a substitute teacher. The examiner did not respond to any of appellant's testimony concerning her employment with Kelly Services, and concluded the proceeding after she finished her explanation by simply stating, "Thank you for your testimony. The hearing is closed."

On December 7, 2020, the hearing examiner issued a short written decision finding that appellant's weekly unemployment benefit should be completely offset by the pension she earned from working for the City of New York. The examiner did not address the fact that appellant's claim for benefits was not based upon her employment with the City.

Appellant appealed the hearing examiner's determination to the Board of Review. On April 23, 2021, the Board affirmed this determination in a brief written decision. The Board also failed to address appellant's contention that her claim for benefits was solely related to her work as a substitute teacher through Kelly Services. This appeal followed.

On appeal, appellant contends that the Board misinterpreted the facts of this case and failed to correctly apply the offset statute and regulations. We agree.

In so ruling, we recognize that our standard of review is limited. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). "We will defer to and not reverse an agency decision unless it is arbitrary, capricious or unreasonable, or it is not supported by substantial credible evidence in the record as a whole." Bailey v. Bd. of Review, 339 N.J. Super. 29, 33 (App. Div. 2001). However, a court is not bound by an agency's interpretation of a statute "because it is the

responsibility of a reviewing court to ensure that an agency's administrative actions do not exceed its legislatively conferred powers." In re Application of Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008) (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

Applying these standards, we are constrained to reverse the Board's decision to offset appellant's unemployment benefits with the pension she earned from her work for the City of New York. N.J.S.A. 43:21-5a is clear. An offset is only permissible under this statute and the implementing regulations if the pension and the unemployment benefits derive from the same employer and are for an overlapping period of work. Giesler, 315 N.J. Super. at 32.

Here, appellant's claim for unemployment benefits was not based upon her prior employment with the City. She obviously did not qualify for benefits based on that employment because the City did not terminate her employment. Instead, she voluntarily retired. See N.J.S.A. 43:21-5(a) (stating that an individual who leaves work voluntarily without good cause attributable to the work is not eligible for unemployment benefits).

Appellant sought unemployment benefits only after she lost her job as a substitute teacher. Therefore, her claim had nothing to do with her prior employment with the City or the pension she earned for that overlapping period

of work. The hearing examiner ignored appellant's undisputed testimony that she qualified for benefits based on her employment through Kelly Services and did not consider the income documentation appellant submitted to the Division to support her claim. Likewise, the Board did not even mention appellant's contention in its very brief final decision. Under these circumstances, the Appeal Tribunal and the Board plainly erred by failing to consider the factual basis for appellant's claim and by applying a pension offset in a case involving a completely different employer.

As we advised the Board over twenty years ago, the benefit claims it reviews "require[] a careful analysis and the requisite findings to insure a just result. Fact-finding is just that. It is not a recitation of statutory citations but a clear and concise demonstration that the litigants have been heard and their arguments considered. Justice requires no less." Bailey, 339 N.J. Super. at 33. Because neither the Appeal Tribunal nor the Board addressed, discussed, or made separate findings concerning appellant's claim for benefits based upon her work for Kelly Services, we reverse the Board's decision imposing a pension offset on appellant's unemployment benefits and its order requiring appellant to refund the benefits the Division previously paid her. We remand this matter to the Board for reconsideration of appellant's claim.

Reversed and remanded. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION