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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-1488-21**

IVONNE D. OVIEDO,

Appellant,

v.

BOARD OF REVIEW,  
DEPARTMENT OF LABOR,  
AND ABB, INC.<sup>1</sup>,

Respondents.

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Submitted April 17, 2023 – Decided May 2, 2023

Before Judges Whipple and Walcott-Henderson.

On appeal from the Board of Review, Division of  
Unemployment Insurance, Department of Labor and  
Workforce Development, Docket No. 246961.

Anthony Macri, attorney for appellant.

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

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<sup>1</sup> We note the complete name is ABB Installation Products, Inc.

## PER CURIAM

Petitioner Ivonne D. Oviedo appeals from a December 9, 2021 final agency decision of the Board of Review (Board) affirming a decision by the Division of Unemployment and Disability Insurance (Division) requiring her to refund an overpayment of \$18,300 in unemployment benefits. We affirm.

Petitioner was employed by ABB Installation Products, Inc., as a machine operator. In September 2019, she went on disability leave for mental health treatment. She received disability benefits through March 2020. In March 2020, she delivered a child and had to quarantine for two weeks due to potential COVID-19 exposure. Because of her mental health disability—not COVID-19—she continued to be unavailable to work through April 24, 2021.

On April 5, 2020, petitioner filed a Pandemic Unemployment Assistance (PUA) claim and received a weekly benefit rate of \$366. From April 11, 2020, until March 20, 2021, petitioner received weekly payments totaling \$18,300.

In March 2021, the Division sent petitioner a Notice of Determination, notifying her she was disqualified for benefits because she had been unavailable for work since April 5, 2020, and thus was ineligible for PUA. The Division also sent a separate Request for Refund of Unemployment Benefits advising

that, under N.J.S.A. 43:21-16(d), she was liable to refund the \$18,300 she improperly received as a benefit from April 11, 2020, to March 20, 2021.

After a telephone hearing, the Appeal Tribunal issued a decision affirming the Division's decision petitioner was ineligible for unemployment benefits, and therefore liable for \$18,300. The Tribunal found petitioner left work on September 26, 2019, on disability leave. She delivered a baby in March 2020, and her employer provided her with private disability benefits. She remained under the care of a therapist and was unable to work from April 5, 2020, until April 24, 2021. Petitioner was already on leave for her mental health condition, unrelated to COVID-19, when she applied for PUA benefits, and her period of unemployment preceded the pandemic.

Petitioner appealed the Tribunal's decision to the Board. The Board found petitioner was given a full and impartial hearing and had a complete opportunity to put forth evidence in favor of her position. Therefore, it was unnecessary for the Board to have a subsequent hearing. The Board affirmed the Appeal Tribunal's decision, agreeing with its conclusions of law and further clarifying the COVID-19 quarantine period did not meet the threshold for PUA relief. This appeal followed.

On appeal, petitioner argues she was deprived of due process because it was not adequately conveyed to her she had a right to be represented by counsel at the hearing. She also contends she should receive the benefit of a waiver of overpayment. We reject her arguments.

Our review of an administrative agency's final determination is limited. Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997). The agency's decision may not be disturbed unless shown to be arbitrary, capricious, unreasonable, or inconsistent with applicable law. Ibid. We afford "[w]ide discretion . . . to administrative decisions because of an agency's specialized knowledge." In re Request to Modify Prison Sentences, 242 N.J. 357, 390 (2020).

In reviewing an agency's decision, the court "must be mindful of, and deferential to, the agency's 'expertise and superior knowledge of a particular field.'" Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009) (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)). "A reviewing court 'may not substitute its own judgment for the agency's, even though the court might have reached a different result.'" In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 483 (2007)). Our review is not designed "to merely rubberstamp an agency's decision," but rather, "we are constrained 'to engage in a careful and principled

consideration of the agency record and findings.'" Sullivan v. Bd. of Rev., Dep't of Lab., 471 N.J. Super. 147, 156 (App. Div. 2022) (quoting Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 191 (App. Div. 2010)).

Under the unemployment compensation law, N.J.S.A. 43:21-1 to -71, eligibility and disqualification for benefits are determined according to a claimant's weekly employment status. An unemployed individual is eligible to receive benefits with respect to any week only if "[t]he individual is able to work, and is available for work, and has demonstrated to be actively seeking work . . . ." N.J.S.A. 43:21-4(c)(1); Melfi v. Bd. of Rev., 336 N.J. Super. 609, 611-12 (App. Div. 2001).

Here, petitioner's own testimony belies the assertion she was able and available to work from April 5, 2020, through April 24, 2021. As to the argument petitioner is entitled to a waiver, we note she did not raise this argument administratively and points to no authority demonstrating any entitlement to a waiver.

To the extent we have not addressed any remaining arguments, it is because we consider them sufficiently without merit to require 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