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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1909-21

ELAINE EMERY,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR,
CHERRY HILL TOWNSHIP
BOARD OF EDUCATION, and
MAPLE SHADE BOARD OF
EDUCATION,

Respondents.

Submitted February 13, 2023 – Decided March 2, 2023

Before Judges Gooden Brown and Mitterhoff.

On appeal from the Board of Review, Department of Labor and Workforce Development, Division of Unemployment Insurance, Docket No. 229833.

Elaine Emery, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent Board of Review (Sookie Bae-Park,

Assistant Attorney General, of counsel; Rimma Razhba, Deputy Attorney General, on the brief).

PER CURIAM

Appellant, Elaine Emery, appeals from the Board of Review's January 13, 2022 order dismissing her appeal as untimely. We affirm.

We discern the following facts from the record. Appellant filed a claim for unemployment compensation benefits on June 14, 2020 based on work she performed for two different employers, Maple Shade Board of Education and Cherry Hill Township Board of Education. Appellant's employment with Maple Shade came to an end on June 12, 2020, after the district decided to disband the after-school program in which appellant worked. At the time of filing, however, appellant was still employed full time with the Cherry Hill school district; a position appellant left voluntarily in July 2020.

On June 17, 2020, the New Jersey Department of Labor (the "Department") sent appellant a Notice to Claimant of Benefit Determination, listing appellant's weekly benefit rate at \$431.00. However, three months later—on September 30, 2020—the Department determined that appellant was ineligible for unemployment benefits from June 14, 2020, because she was employed full time. On that same date, the Department also found appellant ineligible for benefits from June 28, 2020, through September 12, 2020, because

she performed services for an education institution in the first academic year or term and had a contract, "or reasonable assurance," to perform such services the following year or term, in accordance with N.J.S.A. 43:21-4(g). Pursuant to N.J.S.A. 43:21-16(d), the Department mailed appellant a request for a refund, holding appellant liable to refund an overpayment in the amount of \$5,845.00, which the Department determined appellant "collected improperly" for the weeks ending June 20, 2020, through September 19, 2020.

On October 11, 2020, appellant appealed to the Appeal Tribunal ("Tribunal"). In her letter, appellant argued that she did not have a contract for any upcoming school years because Maple Shade disbanded its after-school program and COVID affected her job prospects in Cherry Hill, which caused her to resign on July 1, 2020.

After a phone hearing on December 17, 2020, the Tribunal issued its decision on January 4, 2021. The Tribunal found that appellant was disqualified for benefits as of June 28, 2020, under N.J.S.A. 43:21-5(a), because "she left work voluntarily without good cause attributable to the work" with the Cherry Hill district. In addition, the Tribunal affirmed the Department's determination to hold appellant liable for a refund in the amount of \$5,845.00.

The Tribunal's decision included a notice setting forth the procedure for appealing to the Board of Review ("Board") and the timeframe for taking such an appeal. In pertinent part, the notice stated:

IMPORTANT: This decision will become final, unless, within twenty (20) days of the date of mailing or notification, a written appeal is filed with the Board of Review[.] . . . The appeal period will be extended if good cause for late filing is shown. Good cause exists in situations where it can be shown that the delay was due to circumstances beyond the control of the appellant, which could not have been reasonably foreseen or prevented[.] . . .

On November 15, 2021, almost a year after the Tribunal mailed its decision, appellant appealed the decision to the Board. Appellant provided no explanation for why she waited over ten months to appeal; instead, she argued that there was a "misunderstanding" and that she should only have to pay back the benefits received in connection to her Cherry Hill employment.

On January 13, 2022, the Board dismissed the appeal as untimely, pursuant to N.J.S.A. 43:21-6(c), finding no showing of good cause for such late filing. This appeal followed. On appeal, appellant argues that, although she did not timely file, she did make unsuccessful efforts to get in contact with unemployment personnel, which were hampered due to COVID.

We find insufficient merit in appellant's arguments to warrant extended discussion in a written opinion. Rule 2:11-3(e)(1)(E). We add only the following brief comments.

Judicial review of a quasi-judicial agency determinations is limited. Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (citation omitted); see Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995) ("In light of the executive function of administrative agencies, judicial capacity to review administrative actions is severely limited"). "An administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." In re Herrmann, 192 N.J. 19, 27-28 (2007). The party challenging the administrative actions bears the burden of making that showing. Lavezzi v. State, 219 N.J. 163, 171 (2014). A reviewing court is not, however, bound by an agency's interpretation of a statute or its determination of a strictly legal issue outside its charge. Allstars Auto. Grp., Inc., 234 N.J. at 158 (citation omitted).

Pursuant to N.J.S.A. 43:21-6(c), a decision by the Tribunal "shall be deemed to be the final decision of the [Board], unless further appeal is initiated pursuant to [N.J.S.A. 43:21-6(e)] . . . within [twenty] days after the date of

notification or mailing of such decision." Late appeals may only be considered on the merits "if it is determined that the appeal was delayed for good cause."

N.J.A.C. 12:20-4.1(h). "Good cause" exists where it is shown that:


1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or
2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

[Ibid.]

Here, the Board properly dismissed the appeal because it was not filed within the time limit set forth in N.J.S.A. 43:21-6(c) and because appellant failed to demonstrate good cause for such late filing. The Tribunal's decision was mailed to appellant on January 4, 2021, clearly indicating that her deadline to appeal to the Board was January 24, 2021. Appellant, however, did not appeal until November 15, 2021, which was 295 days after the deadline had run. Finally, we reject appellant's argument that her informal efforts to contact unemployment personnel were a substitute for her statutory obligation of timely filing under N.J.S.A. 43:21-6(c).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION