

**NOT FOR PUBLICATION WITHOUT THE
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-1940-21**

ALLEN DEBE,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR,
and THE MILLENNIUM
GROUP OF DELAWARE,
INC.,

Respondents.

Submitted December 21, 2022 – Decided January 3, 2023

Before Judges Vernoia and Firko.

On appeal from the Board of Review, Department of Labor and Workforce Development, Division of Unemployment Insurance, Docket No. 227881.

Allen Debe, appellant pro se.

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

PER CURIAM

Allen Debe appeals from a Board of Review (Board) final agency decision dismissing as untimely his appeal from an Appeal Tribunal determination he is disqualified from unemployment compensation benefits and liable to refund the benefits he received during his disqualification. Unpersuaded by Debe's claim the Board erred by dismissing his appeal as untimely, we affirm.

On June 15, 2020, Debe resigned from his employment as an office assistant with The Millennium Group of Delaware, Inc. He filed a claim for unemployment benefits with the New Jersey Division of Unemployment Insurance (Division) and received benefits totaling \$5,601 for the weeks ending June 20, 2020, through September 19, 2020.

In a September 29, 2020 letter, a Division Deputy informed Debe he was disqualified from benefits for the weeks ending June 20, 2020, through September 19, 2020, because he left work voluntarily without good cause attributable to the work.¹ The letter further stated Debe was liable for \$5,601 in benefits he received during his disqualification.

¹ The letter also imposed a period of ineligibility for Debe's receipt of Pandemic Unemployment Assistance because he did not qualify for the benefits under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). 15 U.S.C. §§ 9001 to 9141.

Debe appealed from the Deputy's determination and participated in a telephonic hearing before the Appeal Tribunal. The Appeal Tribunal issued a November 12, 2020 decision finding Debe voluntarily resigned from his employment and affirming the Deputy's determination Debe was disqualified for benefits effective the week ending June 20, 2020, because he left work voluntarily without good cause attributable to the work.² See N.J.S.A. 43:21-5(a) (providing, in part, an individual is disqualified for unemployment compensation benefits "[f]or the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works eight weeks in employment").

The Appeal Tribunal further found Debe liable for the refund of the \$5,601 in benefits he received while disqualified. See N.J.S.A. 43:21-16(d)(1) (providing in part that an individual who receives unemployment compensation benefits "while . . . disqualified from receiving benefits . . . shall be liable to repay those benefits in full.").

² The Appeal Tribunal also determined Debe was ineligible for Pandemic Unemployment Assistance under the CARES Act from June 14, 2020, the date he resigned his employment, through November 17, 2020.

The Appeal Tribunal's decision included a notice of "APPEAL RIGHTS" informing Debe of the twenty-day deadline for filing an appeal from the decision to the Board. The notice also explained that if an appeal is not timely filed, the Appeal Tribunal's decision becomes final. The notice further advised Debe the twenty-day deadline for filing the appeal could be extended if he showed good cause for a late filing. More particularly, the notice of "APPEAL RIGHTS" stated in relevant part as follows:

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, Department of Labor, Labor Building, P[.]O[.] Box 937, Trenton, New Jersey 08625-0937. If the last day for the appeal occurs on a Saturday, Sunday or legal holiday, the appeal will be accepted if received or postmarked on the next business day. The appeal period will be extended if good cause for late filing is shown. Good cause exists in situations where it could be shown that the delay was due to circumstances beyond the control of the appellant, which could not have been reasonably foreseen or prevented.

The Appeal Tribunal mailed its decision, which included the notice of "APPEAL RIGHTS," on November 12, 2020. Debe did not, however, file an appeal from the decision within the twenty-day deadline.

On November 4, 2021, three-hundred-and-fifty-seven days after the decision was mailed, Debe filed a written appeal from the Appeal Tribunal's

decision.³ Debe's written appeal consisted of a single-paragraph narrative stating he "would like to appeal the" decision and setting forth his version of the facts leading to his June 14, 2020 resignation from his employment.⁴ The letter did not include any facts explaining his failure to timely file the appeal, addressing the late filing, or offering any grounds constituting good cause under N.J.A.C. 12:20-4.1(h) for the untimely filing of the appeal.

In a November 15, 2021 letter, the Board acknowledged receipt of Debe's appeal. On January 13, 2022, the Board issued its final agency decision. The Board first found that on November 4, 2021, Debe filed his appeal from the Appeal Tribunal's November 12, 2020 decision. The Board then explained N.J.S.A. 43:21-6(c) requires the filing of an appeal from an Appeal Tribunal's decision within twenty-days of the mailing of the decision unless good cause is shown. The Board determined Debe did not show good cause excusing the late filing of the appeal because Debe "did not demonstrate that the delay in filing

³ Debe does not dispute the Appeal Tribunal's decision was mailed on November 12, 2020, or that he received it immediately thereafter.

⁴ Debe's appendix on appeal does not include any other documents or pleadings putatively constituting his written appeal to the Board from the Appeal Tribunal's decision. See generally R. 2:6-1(a)(1)(A) and (I) (requiring the appellant's appendix include pleadings and "such other parts of the record . . . as are essential to the proper consideration of the issues" presented on appeal).

[the] appeal was beyond his control or for circumstances which could not have been reasonably foreseen or prevented as described under N.J.A.C. 12:20-4.1(h)(1) and (2)." The Board therefore ordered the appeal dismissed. This appeal followed.

Our review of decisions by administrative agencies is limited. In re Stallworth, 208 N.J. 182, 194 (2011). The "final determination of an administrative agency . . . is entitled to substantial deference." In re Eastwick Coll. LPN-to-RN Bridge Program, 225 N.J. 533, 541 (2016); see also Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). We reverse if the decision of the administrative agency is "'arbitrary, capricious, or unreasonable,' the determination 'violate[s] express or implied legislative policies,' the agency's action offends the United States Constitution or the State Constitution, or 'the findings on which [the decision] was based [are] not supported by substantial, credible evidence in the record.'" In re Eastwick Coll., 225 N.J. at 541 (alterations in original) (quoting Univ. Cottage Club of Princeton N.J. Corp. v. N.J. Dep't of Env'tl. Prot., 191 N.J. 38, 48 (2007)). "If the Board's factual findings are supported 'by sufficient credible evidence, courts are obliged to accept them.'" Brady, 152 N.J. at 210 (quoting Self v. Bd. of Rev., 91 N.J. 453, 459 (1982)). We

will not disturb the Board's action unless it is "arbitrary, capricious, or unreasonable." Ibid.

As recognized by the Board, N.J.S.A. 43:21-6(c) provides that an Appeal Tribunal's decision "shall be deemed to be the final decision of the board of review, 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."⁵ Where, as here, "review of an Appeal Tribunal's decision is not initiated by either an interested party or the Board . . . within the [prescribed time limits], the decision becomes 'final' and is not subject to review except upon a showing of fraud or other fundamental defect in the proceedings." Von Ouhl v. Bd. of Rev., 254 N.J. Super. 147, 151 (App. Div. 1992) (citing Kaske v. State of N.J., Bd. of Rev., 34 N.J. Super. 222, 225-26 (App. Div. 1955)).

An appeal to the Board from an Appeal Tribunal decision may be filed beyond the twenty-day deadline if it is determined the filing of the appeal was delayed for good cause. N.J.A.C. 12:20-4.1(h). Good cause exists where it is shown: "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

⁵ N.J.S.A. 43:21-6(e) permits appeals to the Board by interested parties and states the Board "may on its own motion affirm, modify, or set aside any decision of an [A]ppeal [T]ribunal."

could not have been reasonably foreseen or prevented." N.J.A.C. 12:20-4.1(h)(1)-(2).

In his merits brief on appeal, Debe argues only that the Appeal Tribunal erred by finding him disqualified from benefits because, contrary to the Appeal Tribunal's determination, he resigned for reasons he claims are attributable to the work. We need not address Debe's argument because it ignores the Board's dismissal of the appeal was founded not on the merits of his claimed entitlement to benefits but rather because his appeal was untimely and he otherwise failed to demonstrate good cause under N.J.A.C. 12:20-4.1(h) for the appeal's grossly late filing.

In his merits brief on appeal, Debe simply does not challenge the Board's determination his appeal from the Appeal Tribunal's decision was untimely under N.J.S.A. 43:21-6(c), and Debe makes no showing of good cause for the late filing under N.J.A.C. 12:20-4.1(h). Lacking any challenge in Debe's merits brief to the Board's determination his appeal from the Appeal Tribunal's order was untimely, and finding the record presented to the Board supports its conclusion the appeal from the Appeal Tribunal's decision is untimely under N.J.S.A. 43:21-6(c), and Debe failed to establish good cause for the late filing under N.J.A.C. 12:20-4.1(h), we affirm the Board's final dismissal order.

We note that, in his reply brief, Debe vaguely claims for the first time on appeal here that the late filing of his appeal to the Board was the result of what he characterizes as his illiteracy. We reject the argument because it was not presented to the Board and does not "go to the jurisdiction of the" Board "or concern matters of great public interest." State v. Robinson, 200 N.J. 1, 20 (2009) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)); see, e.g., Harris v. Middlesex Cnty. Coll., 353 N.J. Super. 31, 48 (App. Div. 2002) (explaining we do not consider on appeal materials "not included in the record below").

We also reject the newly minted argument because we do not consider claims or arguments asserted for the first time in a party's reply brief. See Bacon v. N. J. State Dep't of Educ., 443 N.J. Super. 24, 38 (App. Div. 2015) ("We generally decline to consider arguments raised for the first time in a reply brief."); Bouie v. N.J. Dep't of Comm. Affairs, 407 N.J. Super. 518, 525-26 n.1 (App. Div. 2009) (explaining "a party may not advance a new argument in a reply brief[,] and finding that an argument raised for the first time in a reply brief "was abandoned"); Borough of Berlin v. Remington & Vernick Eng'rs, 337 N.J. Super. 590, 596 (App. Div. 2001) ("Raising an issue for the first time in a reply brief is improper.").

In addition, Debe's illiteracy claim appears undermined by the articulate first-person narratives he supplied to the Board in support of his untimely appeal and in his two briefs, which also provide detailed factual assertions in the first-person, submitted to this court in support of his pending appeal. Moreover, even if we were to consider his vague assertion of illiteracy, it is inadequate to support a finding of good cause for the late filing of the appeal to the Board. Debe does not explain how his purported illiteracy prevented the timely filing of his appeal or that the effect of his alleged illiteracy on his ability to timely file an appeal to the Board could not have been reasonably foreseen or prevented. N.J.A.C. 12:20-4.1(h)(1) and (2). As such, although we reject Debe's reliance on his purported illiteracy because it was not presented to the Board in the first instance and is raised for the first time in his reply brief on appeal here, his claim based on his purported illiteracy, even if accepted as true, does not establish good cause for the late filing of his appeal to the Board under N.J.A.C. 12:20-4.1(h)(1) and (2).

In sum, Debe failed to demonstrate the Board's dismissal of his appeal as untimely is arbitrary, capricious, or unreasonable. See Brady, 152 N.J. at 218 ("Claimants bear the burden of proof to establish their right to unemployment

benefits."). For that reason, his challenge to the Board's decision and dismissal order fails.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION