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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2059-21**

MORGAN N. FARREN,

Appellant,

v.

**BOARD OF REVIEW,
DEPARTMENT OF LABOR,
and ASSEM-PAK INC.,**

Respondents.

Argued April 19, 2023 – Decided June 28, 2023

Before Judges Vernoia and Firko.

On appeal from the Board of Review, Department of Labor, Docket No. 244840.

Garrett Treer argued the cause for appellant (South Jersey Legal Services, Inc., attorneys; Garrett Treer, John Pendergast, and Kenneth Goldman, on the briefs).

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

PER CURIAM

Claimant Morgan N. Farren appeals from a Board of Review (Board) final agency decision affirming an Appeal Tribunal determination she is ineligible for unemployment benefits under the Unemployment Compensation Law (UCL), N.J.S.A. 43:21-1 to -71, and, as a result, is liable to refund \$7,105 in benefits she received prior to the ineligibility determination. Having considered the record presented, the parties' arguments, and the applicable legal principles, we vacate the Board's decision and remand for further proceedings.

I.

Claimant applied for unemployment benefits and was awarded a \$203 weekly benefit for the weeks ending March 9, 2020, through January 2, 2021. The New Jersey Department of Labor and Workforce Development, Division of Unemployment Insurance (the Division) subsequently deemed claimant ineligible for benefits and liable to refund the \$7,105 in benefits she received based on its determination she voluntarily resigned from her employment with Assem-Pak, Inc. "to avoid potential exposure to the [c]oronavirus." Claimant timely appealed from the Division's determination.

At a hearing before an Appeal Tribunal, claimant testified that following her release on parole from State prison, her parole counselors assigned her to a

half-way house — Hanson House for Women (Hanson House) — located in Egg Harbor City. According to claimant, Hanson House "found" her a job with Assem-Pak, Inc. and provided claimant's transportation to and from Assem-Pak, Inc.'s Vineland facility. From July 19, 2019, until January 10, 2020, claimant worked "full-time" at Assem-Pak, Inc., "Monday through Friday[.]" without incident or interruption.

On or about January 10, 2020, claimant was released from parole, was then no longer eligible to reside at Hanson House, and was therefore required to end her residence there. Claimant discussed those changed circumstances with her employer, who "understood all the circumstances" and "why [she] had to leave" her employment "if [she] could not make it[.]"

Claimant testified she "ended up leaving" her employment at Assem-Pak, Inc. "mainly because [she] couldn't get there" because she could no longer reside at Hanson House and Hanson House would no longer provide transportation to and from work. Claimant explained that without the transportation Hanson House formerly provided, she would be required to rely on public transportation because she did not have, and could not afford, a car.

Claimant further testified that once ousted from Hanson House, she did not have a place to live other than her grandmother's home in Berlin, New Jersey.

Claimant explained her grandmother "was the only person willing to help [her] when [she] got out" of parole at Hanson House. Claimant further testified the commute time between Assem-Pak, Inc.'s Vineland facility and her grandmother's residence in Berlin was "about a seven hour round trip taking the bus" at cost of "about \$20.00 . . . round trip."¹ As a result of her ouster from Hanson House and lengthy commute to and from Assem-Pak, Inc. from her new residence in Berlin, claimant last worked at Assem-Pak, Inc. on January 10, 2020.

Claimant testified that after relocating to Berlin, she applied for various employment positions without success. She explained prospective employers rejected her applications for employment due to her criminal record, which shows her incarceration for a criminal conviction. After she could not obtain employment after leaving Assem-Pak, Inc., claimant applied for unemployment benefits on May 3, 2020.

In its written decision, the Appeal Tribunal found claimant was employed as an assembly worker from July 19, 2019, through January 10, 2020, when she "left the job in Vineland . . . voluntarily because she was living in a half-way

¹ In its decision following the hearing, the Appeal Tribunal found it "was too great for [claimant] to[] commute back and forth from Berlin, N.J. to Vineland, NJ for work."

house in Egg Harbor Township after being paroled and it was time for her to go home to Berlin." The Appeal Tribunal further found claimant's commute from Assem-Pak Inc.'s Vineland facility to Berlin "would be too great . . . to travel back and forth to work every day as she would have to rely on public transportation or walk."

The Appeal Tribunal determined claimant was disqualified for benefits under N.J.S.A. 43:21-5 because her "reasons for leaving the work" – her relocation to Berlin and the lengthy commute that would be required to continue working in Vineland – "are personal and unrelated to the work itself, and . . . claimant has not shown good cause sufficient to warrant leaving available work for none at all." Thus, the Appeal Tribunal concluded claimant was disqualified for benefits as of January 5, 2020, because she "left work voluntarily without good cause attributable to such work."² The Appeal

² The Appeal Tribunal separately determined claimant was disqualified for Pandemic Unemployment Assistance benefits under the CARES Act, 15 U.S.C. §§ 9001 to 9141. The Appeal Tribunal found claimant was not entitled to the benefits as of May 3, 2020, because her "unemployment was not due to one of the COVID-19 related reasons identified in [s]ection [9021](a)(3)(A)(ii)(I) of the CARES Act." We do not address those findings because claimant does not argue on appeal that either the Appeal Tribunal or the Board erred by denying benefits under the CARES Act. See Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011) (explaining an issue not addressed in a party's merits brief is deemed waived on appeal).

Tribunal further determined claimant was liable under N.J.S.A. 43:21-16(d) to refund the \$7,105 in benefits she received for the weeks ending May 9, 2020, through January 2, 2021.³

Claimant appealed from the Appeal Tribunal's decision. In its final agency decision, the Board affirmed the Appeal Tribunal. This appeal followed.

II.

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). 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 were not supported by substantial, credible evidence in the record.'" Ibid. (alterations in original) (quoting Univ. Cottage Club of Princeton N.J. Corp. v. N.J. Dep't of Env't Prot., 191 N.J. 38,

³ N.J.S.A. 43:21-16(d)(1) "requires the full repayment of unemployment benefits received by an individual who, for any reason, regardless of good faith, was not actually entitled to those benefits." Bannan v. Bd. of Rev., 299 N.J. Super. 671, 674 (App. Div. 1997).

48 (2007)). Unless the appellant challenging the agency action demonstrates the agency's decision was "arbitrary, capricious, or unreasonable, the agency's ruling should not be disturbed." Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997).

Although "we must give deference to the agency's findings of facts, and some deference to its 'interpretation of statutes and regulations within its implementing and enforcing responsibility,' [reviewing courts] are 'in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue[.]'" Utley v. Bd. of Rev., 194 N.J. 534, 551 (2008) (citations omitted) (first quoting In re Appeal by Progressive Cas. Ins. Co., 307 N.J. Super. 93, 102 (App. Div. 1997), and then quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)). In other words, a reviewing court "defer[s] to an agency's interpretation of both a statute and implementing regulation, within the sphere of the agency's authority, unless the interpretation is plainly unreasonable." Ardan v. Bd. of Rev., 231 N.J. 589, 604 (2018). Thus, a reviewing court is "not bound by an unreasonable or mistaken interpretation of [a statutory] scheme, particularly one that is contrary to legislative objectives." McClain v. Bd. of Rev., 237 N.J. 445, 456 (2019).

Claimant principally argues the Board erred in its application of the standard for disqualification for unemployment benefits under N.J.S.A. 43:21-

5(a), which in pertinent part provides "[a]n individual shall be disqualified for 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, . . . as determined in each case." (emphasis added). More particularly, claimant argues the Board erred in finding she left work voluntarily because the Board failed to engage in the fact-sensitive analysis the Supreme Court in Haley v. Board of Review found is required under N.J.S.A. 43:21-5(a) and N.J.A.C. 12:17-9.1. 245 N.J. 511, 520-24 (2021). Claimant argues a proper analysis of the record requires a finding she did not leave work "voluntarily" under the statute and regulation, and, for that reason alone, the Appeal Tribunal and the Board erred by finding she is disqualified from benefits under N.J.S.A. 43:21-5(a).

In Haley, the Court interpreted N.J.S.A. 43:21-5(a)'s disqualification-from-unemployment-benefits requirement for individuals who leave work "voluntarily without good cause attributable to such work" 245 N.J. at 515. The Court explained "the UCL 'must be construed liberally in favor of an allowance of benefits[,]" id. at 520 (quoting McClain, 237 N.J. at 461-62), to comport with "the UCL's remedial purpose" of "provid[ing] some income for

the worker earning nothing, because [the worker] is out of work through no fault or act of [their] own[,]" ibid. (quoting Uteley, 194 N.J. at 543).

A determination whether an individual is disqualified for benefits for leaving work voluntarily without good cause attributable to such work under N.J.S.A. 43:21-5(a) requires a fact-sensitive determination as to whether the individual may be "deemed" to have "voluntarily" left such work. Ibid. That inquiry is guided by N.J.A.C. 12:17-9.1(e), which in part provides "[a]n individual's separation from employment shall be reviewed as a voluntarily leaving work issue where the separation was for" any one of ten specified reasons, including: "[l]ack of transportation[,]" "[l]ack of housing[,]" and "[r]elocating to another area for personal reasons[.]" N.J.A.C. 12:17-9.1(e)(1), (5), and (6).

The Court in Haley further explained the Department of Labor and Workforce Development (DOL) has consistently interpreted N.J.A.C. 12:17-9.1 such that an individual is not automatically disqualified from benefits where they left work for one or more of the reasons listed in the regulation. Ibid. For example, the Court noted the DOL has explained N.J.A.C. 12:17-9.1(e) expressly provides "the individual's separation may be 'reviewed' as a voluntarily leaving work issue[,]" and that "the word 'voluntarily'" in N.J.S.A.

43:21-5(a) "is not a separate and additional requirement for disqualification but rather is a legislative characterization of a worker who leaves work without good cause attributable to such work." Ibid. (quoting 30 N.J.R. 2027(a) (June 1, 1998)).

The Court further noted that, more recently, the DOL "has highlighted the need for a fact-sensitive analysis to determine whether the claimant's separation from work is voluntary," noting "N.J.A.C. 12:17-9.1(e)'s list of circumstances reviewable as 'voluntarily leaving work issues[s]' . . . does not mean that where a separation occurred under one of the circumstances listed there must be a finding that the individual is disqualified from receipt of benefits for voluntarily leaving work without good cause attributable to the work[.]" Ibid. (alteration in original) (quoting 41 N.J.R. 263(a) (Jan. 5, 2009)). As noted by the Court, the DOL interprets N.J.A.C. 12:17-9.1(e) to require a "case-by-case" analysis of the circumstances detailed in the regulation, "using the voluntarily quit analysis[:] that is, whether the individual left the work voluntarily and then, if [the individual] did leave the work voluntarily, whether [the individual] left voluntarily with or without good cause attributable to the work." Ibid. (quoting 41 N.J.R. 263(a) (Jan. 5, 2009)).

The Court in Haley also noted its prior decisions interpreting N.J.S.A. 43:21-5(a) and N.J.A.C. 12:17-9.1(e). For example, in Utley, the Court found "the notion that leaving work for reasons listed in N.J.A.C. 12:17-9.1(e) is not a per se bar to unemployment benefits." Haley, 245 N.J. at 522 (citing Utley, 194 N.J. at 543). In Utley, the Court also determined that where a claimant's separation from employment occurs under one of the circumstances delineated in N.J.A.C. 12:17-9.1(e), the separation must be reviewed on a case-by-case basis and include consideration of "all relevant factors" 194 N.J. at 548.

Based on those established legal principles, the Court in Haley determined the claimant, whose employment ended at least in part due to his pretrial incarceration under the Criminal Justice Reform Act, N.J.S.A. 2A:162-1 to -26, and who sought reemployment after being released following the dismissal of the charges, presented a "voluntarily leaving work issue" under N.J.S.A. 43:21-5(a) and N.J.A.C. 12:17-9.1(e)(10).⁴ Id. at 523-24.

Thus, the Court determined the claimant's incarceration was not the end of the inquiry concerning his entitlement to unemployment benefits and putative disqualification from benefits under N.J.S.A. 43:21-5(a), but rather was "only

⁴ N.J.A.C. 12:17-9.1(e)(10) provides that "[a]n individual's separation from employment shall be reviewed as a voluntarily leaving work issue where the separation was for . . . [i]ncarceration."

one part of the inquiry" required under N.J.A.C. 12:17-9.1(e). Id. at 524. The Court found the circumstances presented required a "fact-sensitive review of the totality of the circumstances surrounding [the claimant's] detention and release [from incarceration] to determine whether he 'left work voluntarily.'" Ibid. (quoting Utley, 194 N.J. at 548). The Court remanded for the DOL to conduct a "fact-sensitive analysis," ibid., based on a consideration of the "totality of the circumstances" to determine if the claimant "left work voluntarily," id. at 524 n.3.

Measured against the Court's holding and guidance in Haley, we vacate the Board's final agency decision and remand for the requisite fact-sensitive analysis required in the first instance to determine whether claimant left work voluntarily. Here, the evidence supports application of three of the enumerated circumstances set forth in N.J.A.C. 12:17-9.1(e) for claimant's leaving work. Claimant testified she did not return to work at Assem-Pak, Inc. in part due to a lack of convenient and feasible transportation, a lack of housing due to her ouster from Hanson House, and her need to relocate to her to grandmother's

home in Berlin because that is the singular place she could find and afford housing.⁵

The Appeal Tribunal did not engage in a fact-sensitive analysis of those circumstances in reaching its conclusory determination claimant left work voluntarily, and the Board also did not conduct the analysis of the totality of the circumstances required by the Court in Haley. We therefore vacate the Board's final agency decision and remand for the Board to engage in that analysis and make findings based on the record, the evidence presented at any additional proceedings, and the parties' arguments on remand. We reject the parties' respective claims we should conduct that analysis and make such findings in the first instance on appeal.

On remand, the Board shall conduct and order such additional proceedings as it deems appropriate, including the presentation of additional evidence before an Appeal Tribunal if necessary, on the issue of whether claimant "left work voluntarily" under N.J.S.A. 43:21-5(a) and N.J.A.C. 12:17-9.1(e), as well as any other issues pertinent to a proper determination of claimant's application for

⁵ Claimant also testified that, at some point in the process, she became pregnant and had a child. It is unclear whether her separation from employment was in whole or in part based on circumstances related to childcare, but, if it was, that must also be considered on remand under N.J.A.C. 12:17-9.1(e)(2).

unemployment compensation benefits and request for relief from liability for the refund.

Our opinion should not be interpreted as an opinion on the merits of claimant's entitlement to unemployment benefits. We determine only that in accordance with the Court's decision in Haley, 245 N.J. at 520-22, the Board must engage in the fact-sensitive analysis required under N.J.S.A. 43:21-5(a) and N.J.A.C. 12:17-9.1(e), and determine anew claimant's entitlement, if any, to unemployment compensation benefits by applying "the voluntary quit" analysis, Haley, 245 N.J. at 521 (quoting 41 N.J.R. 263(a) (Jan. 5, 2009)). We do not limit the parties in making all arguments pertinent to a disposition of those issues on remand, including arguments presented on appeal we have not expressly addressed based on our decision to remand for further proceedings.

Vacated and remanded for further proceedings consistent with this opinion. 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