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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2159-21

SVETLANA GIMPELEV,

Appellant,

v.

BOARD OF REVIEW,  
DEPARTMENT OF LABOR,  
PUBLIC PARTNERSHIP  
and DUSK TO DAWN  
CHAPERONES,

Respondents.

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Submitted June 1, 2023 – Decided June 28, 2023.

Before Judges Accurso and Vernoia.

On appeal from the Board of Review, Department of  
Labor, Docket No. 243650.

Svetlana Gimpelev, appellant pro se.

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

## PER CURIAM

Petitioner Svetlana Gimpelev appeals from a February 10, 2022 Board of Review (Board) final agency decision. The Board's decision affirmed an Appeal Tribunal determination petitioner is obligated to refund the Division of Unemployment Insurance (Division) \$2,085 for Pandemic Unemployment Assistance (PUA) benefits that were overpaid during weeks petitioner was entitled to regular unemployment benefits or had otherwise exhausted her entitlement to regular benefits. Based on our review of the record, petitioner's arguments, and the applicable legal principles, we affirm in part, vacate in part, and remand for further proceedings.

In April 2020, petitioner filed a claim for regular unemployment benefits. The Division denied the claim because there was no evidence at that time petitioner worked a sufficient number of weeks or earned enough wages supporting an award of regular benefits. The Division then deemed petitioner's claim was an application for PUA benefits. The Division granted the claim and petitioner thereafter received a weekly \$231 PUA benefit for the weeks ending April 18, 2020, through December 5, 2020.

In December 2020, the Division received new information showing petitioner had worked sufficient weeks and earned enough wages to qualify for

regular unemployment benefits commencing in the week ending April 18, 2020. As a result of its receipt of the information, the Division converted petitioner's claim to one for regular unemployment benefits. The Division determined petitioner was entitled to \$213 in regular weekly unemployment benefits for twenty-six weeks.

Based on that determination, the Division therefore found petitioner was entitled to \$213 in weekly regular benefits for the weeks ending April 18, 2020 through October 17, 2020, instead of the \$231 in PUA benefits she had been paid. The Division concluded petitioner was therefore obligated to refund \$18 per week for that period.

The Division further determined that because petitioner exhausted her entitlement to twenty-six weeks of regular unemployment benefits during the week ending October 17, 2020, but she continued to receive \$231 per week in PUA benefits through the week ending December 5, 2020, she was obligated to refund the \$231 in weekly benefits she received during those seven weeks as well.

The Division determined a total refund of \$2,085 was due from petitioner.<sup>1</sup> In a December 27, 2020 letter, the Division advised petitioner of its determination and of her obligation to refund \$2,085 for an overpayment of benefits for the weeks ending April 18, 2020 through December 5, 2020.

Petitioner challenged the Division's refund request. The Appeal Tribunal conducted a hearing over two days at which petitioner testified. Following the hearing, the Appeal Tribunal issued a decision finding the Division's \$18 per week overpayment to petitioner during the weeks ending April 18, 2020, through October 17, 2020. The Appeal Tribunal concluded that because petitioner exhausted her entitlement to regular benefits during the week ending October 17, 2020, she was not entitled to the \$231 weekly PUA benefit she received over the following seven weeks, concluding during the week ending December 5, 2020. The Appeal Tribunal determined petitioner was liable for a refund in the amount of \$2,085 pursuant to N.J.S.A. 43:21-16(d).

Petitioner appealed from the Appeal Tribunal's determination. In its final agency decision, the Board explained that under the CARES Act, 15

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<sup>1</sup> The refund for twenty-six weeks at \$18 per week is \$468. The refund for seven weeks at \$231 per week is \$1,617. The total of those sums is \$2,085.

U.S.C. §§ 9001 to 9141, "claimants who qualify for regular unemployment benefits are not eligible for [PUA] benefits." The Board further determined that because petitioner established an entitlement to regular unemployment benefits during the period she collected PUA benefits, she was "precluded" from collecting PUA benefits and was therefore obligated to refund the difference between the PUA benefits she received and the regular unemployment benefits to which she was entitled. The Board affirmed the Appeal Tribunal's determination petitioner is liable to refund \$2,085. Petitioner appeals from the Board's final decision.

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, 48 (2007)). "[I]n reviewing the factual findings made in an unemployment compensation proceeding, the test is not whether an appellate court would come to the same conclusion if the original determination was its to make, but rather whether the factfinder could reasonably so conclude upon the proofs." Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997) (quoting Charatan v. Bd. of Rev., 200 N.J. Super. 74, 79 (App. Div. 1985)).

"The CARES Act expanded eligibility, under the PUA program, for payment of benefits of certain categories of individuals." Sullivan v. Bd. of Rev., Dep't of Lab., 471 N.J. Super. 147, 153 (App. Div. 2022). More particularly, under the CARES Act, the United States Secretary of Labor "shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation." 15 U.S.C. § 9021(b) (emphasis added). Stated differently, there is no entitlement to PUA benefits under the CARES Act where an individual is otherwise eligible for regular unemployment compensation. See 15 U.S.C. § 9021(a)(3)(A)(i) (emphasis added) (providing in part a "covered individual" entitled to receive PUA

benefits is a person who "is not eligible for regular compensation or extended benefits under State or Federal law . . . including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law . . . .").

Petitioner argues on appeal she "believe[s]" she was entitled to an extension of her regular unemployment benefits beyond the twenty-six weeks the Board utilized to determine the amount of the refund due. Petitioner, however, acknowledges she applied for an extension of benefits and her application remains pending and undecided. She also argues she "believe[s]" she is entitled to PUA benefits and that requiring her to "pay[] back \$2,085 does not look proper."

The record supports the Board's determination petitioner received PUA benefits to which she was not entitled during the twenty-six weeks, ending with the week of October 17, 2020, she was otherwise entitled to regular unemployment benefits. See 15 U.S.C. § 9021(a)(3)(A)(i). We therefore affirm the Board's determination petitioner should not have received PUA benefits during that time and is liable for a \$468 refund.

In contrast, neither the Appeal Tribunal nor the Board provided any explanation for the determination petitioner was not entitled to PUA benefits,

for which she had otherwise been deemed qualified, following the exhaustion of her regular benefits during the week ending October 17, 2020. As noted, 15 U.S.C. § 9021(a)(3)(A)(i) expressly provides that a claimant who otherwise meets the statutory requirements for PUA benefits is entitled to those benefits following the exhaustion of regular unemployment benefits under State law.

That is precisely the situation in which petitioner found herself following the exhaustion of regular benefits during the week ending October 17, 2020. And, as the record establishes, petitioner had otherwise been found to satisfy the statutory requirements for PUA benefits. The Board's determination petitioner was therefore not entitled to PUA benefits during the seven weeks following the exhaustion of her entitlement to regular benefits is unsupported by the record presented on appeal.

For that reason, we vacate the Board's determination petitioner was not entitled to PUA benefits for the seven weeks ending during the week of December 5, 2020, and is therefore liable to refund the \$1,617 in PUA benefits she received during that those weeks. We do not determine petitioner was entitled to PUA benefits, or an extension of regular benefits, during that time,



and we do not otherwise offer an opinion on the merits of those issues.<sup>2</sup> We conclude only the Appeal Tribunal and Board's findings do not support the determination that simply because petitioner's regular benefits ended during the week of October 17, 2020, her entitlement to the PUA benefits to which she had otherwise been deemed qualified automatically ended as well. See 15 U.S.C. § 9021(a)(3)(A)(i).

On remand, the parties shall be entitled to make such arguments, and supplement the record with evidence, addressed to those issues on remand. The Board shall order such proceedings it deems appropriate to facilitate a disposition of the issues.

We note that with respect to the \$468 refund we affirm, the Division is constrained to seek refunds under N.J.S.A. 43:21-16(d)(1), which "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)

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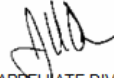
<sup>2</sup> Petitioner argues on appeal that she sought an extension of her regular unemployment benefits and continuation of PUA benefits beyond the week ending October 17, 2020. The appellate record does not include any documentary or other evidence concerning such claims or their disposition, if any. As such, we offer no opinion on those claims, their disposition, or the manner in which the claims or their disposition may affect the issues presented on remand.

(citing Fischer v. Bd. of Rev., 123 N.J. Super. 263, 266 (App. Div. 1973)). Although refunds required under N.J.S.A. 43:21-16 may impose a hardship on a claimant, they are "necessary to preserve the ongoing integrity of the unemployment compensation system." Id. at 675. Moreover, "federal law requires that a state recover improperly paid unemployment compensation benefits." Ibid.

Affirmed in part, vacated in part, and remanded for further proceedings.

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