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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3024-21**

E.P.,

Appellant,

v.

**BOARD OF REVIEW,
DEPARTMENT OF LABOR, and
SHOP RITE OF ENGLEWOOD
ASSOCIATES, INC.,**

Respondents.

Argued October 11, 2023 – Decided October 23, 2023

Before Judges Rose and Perez Friscia.

On appeal from the Board of Review, Department of Labor, Docket No. 244120.

Sarah Shaver Hymowitz argued the cause for appellant (Legal Services of New Jersey, attorneys; Sarah Shaver Hymowitz, on the briefs).

Andrew J. Sarrol, Deputy Attorney General, argued the cause for respondent Board of Review (Sookie Bae-Park, Assistant Attorney General, of counsel; Andrew J. Sarrol, on the brief).

PER CURIAM

E.P.¹ appeals from the April 21, 2022 Board of Review final agency decision, which determined she was ineligible for regular unemployment benefits and Pandemic Unemployment Assistance (PUA) benefits, and was therefore liable to refund \$10,164 she had received in benefits. We affirm.

E.P. was employed as a part-time cashier at ShopRite from November 1, 2019, until March 14, 2020. On March 14, 2020, E.P.'s mother, T.G., with whom she resided, had been exposed to the COVID-19 virus. Because T.G. had asthma, her doctor recommended that all her household members quarantine for fourteen days. E.P. complied with those medical instructions but thereafter never returned to work. On April 19, 2020, E.P. applied for regular unemployment benefits and received \$231 a week from April 25, 2020, through February 20, 2021, collecting a total amount of \$10,164.

On March 3, 2021, the Division of Unemployment Insurance (Division) notified E.P. that she was determined ineligible for unemployment benefits or PUA benefits. The Division disqualified E.P. because she had left work voluntarily and had not returned proper documentation to her employer for a COVID-19-related

¹ This appeal involves references to E.P.'s mother's medical condition. Accordingly, we use initials to protect her privacy interests. See R. 1:38-3(a)(2).

leave. E.P. was disqualified from PUA benefits because she was not unemployed for a qualifying reason under the Coronavirus Aid, Relief and Economic Security (CARES) Act, 15 U.S.C. § 9001 to 9141. The Division further notified E.P. that she was liable to refund the monies she improperly received.

On March 14, 2021, E.P. appealed the Division's decision to the Appeal Tribunal (Tribunal). The Tribunal held a hearing on April 7, 2021, during which the self-represented E.P. testified that: her mother was asthmatic and at a high-risk of complications from COVID-19; her mother had been exposed to COVID-19, which resulted in a doctor's recommendation that their household quarantine for fourteen-days; and she lost her transportation to work because her cousin moved to Florida. E.P. conceded she never returned to work.

The Tribunal found E.P. left her employment after the fourteen-day quarantine period for personal reasons based upon her fear of transmitting COVID-19 to her mother, which was without any medical recommendation, and due to lack of transportation. Because E.P.'s reasons for quitting were voluntary and without cause attributable to her employment, she was ineligible for benefits and was required to reimburse the improperly received funds.

On April 26, 2021, E.P. appealed the Tribunal's decision to the Board. The Board remanded the matter to the Tribunal for further development of a factual

record on E.P.'s loss of transportation due to COVID-19, and to consider E.P.'s qualification for PUA benefits for the two weeks starting March 14, 2021.

On December 16, 2021, the Tribunal held a second hearing. For the first time before the Tribunal, E.P. was represented by counsel. The Tribunal again found E.P. left her employment at ShopRite voluntarily and without good cause attributable to her work, based on her personal fear of transmitting COVID-19 to her mother, and transportation issues. At the Tribunal hearing, E.P. acknowledged she had never provided ShopRite with a return-to-work date and thereafter never applied for other employment. The Tribunal found E.P. was ineligible for PUA benefits because she did not leave her employment based on one of the qualifying enumerated reasons stated in 15 U.S.C. § 9021(a)(3)(A)(ii). Specifically, the Tribunal found E.P. was unemployed based on personal reasons, not a COVID-19-related reason; thus, it again concluded reimbursement was required under N.J.S.A. 43:21-16(d).

On February 8, 2022, E.P. appealed the Tribunal's decision to the Board, which the Board affirmed on April 8, 2022. On April 21, 2022, the Board vacated its decision because E.P.'s claim for back-dated PUA benefits had not been addressed, but otherwise affirmed the Tribunal's decision, adopting its findings. E.P.'s request for PUA benefits from March 15, 2020 through March 28, 2020, was

referred to the Division for consideration of the fourteen-day quarantine period based on T.G.'s COVID-19 exposure.

On appeal before us, E.P. argues: the Board re-examined her eligibility without supporting authority entitling it to a redetermination of her benefits; she is entitled to PUA benefits because T.G.'s doctor instructed her to quarantine for fourteen days to reduce risk of exposure; she had no transportation due to COVID-19; equitable estoppel dictates the Board should be foreclosed from reimbursement; and any reimbursement should be a limited recoupment for only fifty percent repayment, pursuant to N.J.A.C. 12:17-3.3(b), based on "agency error," N.J.A.C. 12:17-14.3.

Our scope of review of an agency determination is limited. D.C. v. Div. of Med. Assistance & Health Servs., 464 N.J. Super. 343, 352 (App. Div. 2020). The agency's decision may not be disturbed unless shown to be "'arbitrary, capricious, or unreasonable,' or 'unsupported by substantial credible evidence in the record.'" Sullivan v. Bd. of Rev., Dep't of Lab., 471 N.J. Super. 147, 155-56 (App. Div. 2022). 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). For a "final agency decision, such as that of the Board of Review, we defer to factfindings that are supported by sufficient credible evidence in the

record." McClain v. Bd. of Rev., Dep't of Lab., 237 N.J. 445, 456 (2019); see also Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997).

"In 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, 152 N.J. at 210 (quoting Charatan v. Bd. of Rev., 200 N.J. Super. 74, 79 (App. Div. 1985)). 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). An agency's discretion, however, "is not unbounded and must be exercised in a manner that will facilitate judicial review." In re Kim, 403 N.J. Super. 378, 384 (2008) (quoting R & R Mktg., L.L.C. v. Brown Forman Corp., 158 N.J. 170, 178 (1999)).

"The CARES Act expanded eligibility, under the PUA program, for payment of benefits of certain categories of individuals." Sullivan, 471 N.J. Super. at 153. 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). The Department of Labor promulgated regulations to implement the CARES Act. N.J.A.C. 12:17-12.8. To qualify as a "covered individual," a claimant must certify that he or she is unemployed, partially unemployed, or unable or unavailable to work due to a qualifying COVID-19-related reason. 15 U.S.C. § 9021(a)(3)(A)(ii). The enumerated reasons that qualify for entitlement to PUA benefits are set forth in Section 9021(a)(3)(A)(ii)(I) and include that "the individual has to quit his or her job as a direct result of COVID-19." 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(ii). Applicants are required to "satisfy the burden of establishing that [they are] entitled to" PUA benefits under one of the qualifying reasons. McClain, 237 N.J. at 464.

The Division is constrained to seek refunds under N.J.S.A. 43:21-16(d), 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); see also Sullivan, 471 N.J. Super. at 147 (holding a claimant who is not qualified to receive benefits under the CARES act, must refund those benefits). 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. "Under 42 U.S.C. § 502, states must ensure that federal funds are used for the 'proper and efficient administration' of unemployment compensation laws." Sullivan, 471 N.J. Super. at 155. "The Division may reconsider a final determination for . . . fraud," "newly discovered evidence," a "material mistake," a "determination . . . entered without legal right," or a "clearly erroneous action." N.J.A.C. § 12:17-3.3(b).

The record demonstrates sufficient credible evidence to support the Board's determination that E.P. was not eligible for PUA benefits as her decision to not return to work was based on personal reasons. Additionally, E.P. did not qualify for PUA benefits as an individual who had "to quit . . . her job as a direct result of COVID-19." See 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(ii). E.P. quarantined for fourteen days in accordance with a doctor's instructions because her mother had been exposed to COVID-19 and was considered high-risk, but E.P. thereafter never returned to work at ShopRite and failed to provide documentation to support her claim. She did not seek other employment and did not take measures to find alternative transportation. Our Court has "recognized that '[c]ommuting is usually considered a problem of the employee.'" Utley v. Bd. of Rev., Dep't of Lab., 194 N.J. 534, 545 (2008) (quoting Self v. Bd. of Rev., 91 N.J. 453, 456 (1982)). E.P. failed to demonstrate how

COVID-19 directly resulted in her quitting and, thus, did not refute her failure to return to work was based on personal reasons.

E.P. acknowledges that she was ineligible for regular unemployment benefits and may not have been eligible for PUA benefits, but she disputes the Board's authority to re-determine her eligibility. An ineligible claimant "should refund the benefits to which she was not entitled." Hay v. Bd. of Rev., 282 N.J. Super. 117, 120 (App. Div. 1995). E.P.'s dispute of the Division's authority to re-examine eligibility is unavailing; the Division is required to ensure federal funds are properly administered and to seek refunds of improperly paid unemployment benefits. N.J.S.A. 43:21-16(d)(1). The Division's actions were not arbitrary, capricious, or unreasonable.

We observe, "[a]lthough the doctrine of equitable estoppel is rarely invoked against a governmental entity . . . [courts have] long held that the prevention of manifest injustice provides an exception to the general rule." Sullivan, 471 N.J. Super. at 157 (alteration in original) (quoting Aqua Beach Condo. Ass'n v. Dep't of Cmty. Affairs, Bureau of Homeowner Prot., New Home Warranty Program, 186 N.J. 5, 20 (2006)). While it is undisputed that the Division erroneously granted E.P. benefits, we conclude that, "the State, through the Division and appeals process, evenhandedly and reasonably applied federal

and State laws and regulations to seek a refund of those benefits." Sullivan, 471 N.J. Super. at 157-58. We note equitable estoppel is raised for the first time on appeal. We thus decline to further consider the issue. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).

To the extent we have not addressed any of plaintiff's remaining arguments, they are without sufficient merit to warrant 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