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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3400-21**

**DONNA BRAKEFIELD,**

Appellant,

v.

**BOARD OF REVIEW,  
DEPARTMENT OF LABOR,  
and AMERICAN ADDICTION  
CENTERS, INC.,**

Respondents.

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Submitted October 18, 2023 – Decided November 6, 2023

Before Judges Vernoia and Gummer.

On appeal from the Board of Review, Department of Labor, Docket No. 270058.

Donna Brakefield, appellant pro se.

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

PER CURIAM

Claimant Donna Brakefield appeals from the final decision of the Board of Review affirming an Appeal Tribunal decision finding claimant was disqualified from receiving Pandemic Unemployment Assistance (PUA) benefits under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), 15 U.S.C. §§ 9001 to 9141, for the weeks ending March 14, 2021, through November 13, 2021, and ordering claimant refund \$14,200 for benefits received during the disqualification period. The Board determined claimant was disqualified under N.J.S.A. 43:21-5a from regular unemployment benefits as of April 18, 2021, because she had left her employment without good cause attributable to the work and she was not eligible for PUA benefits because her unemployment was not due to a reason qualifying her for those benefits under the CARES Act. Having considered the evidence presented to the Appeal Tribunal, claimant's arguments, and the applicable legal principles, we affirm.

I.

Claimant was employed as a behavioral technician by American Addiction Centers, Inc. (American Addiction) from January 2017 through February 17, 2021. American Addiction granted claimant's request for a leave of absence from February 22, 2021, through April 21, 2021. American Addiction

terminated claimant's employment on April 22, 2021, when she failed to return to work following the approved leave of absence.

Claimant applied for PUA benefits on March 14, 2021, and received the requested benefits from March 20, 2021, through September 4, 2021. On October 6, 2021, a deputy for the Director of the Division of Unemployment and Disability Insurance determined claimant was ineligible for PUA benefits because her unemployment had not resulted from any of the reasons qualifying an individual for the benefits under the CARES Act.

Claimant appealed from the deputy's determination and the Appeal Tribunal held a hearing at which claimant and an American Addiction representative testified. Claimant explained she had taken the leave of absence from her employment to care for a sick relative and did not return to work when the approved leave of absence ended on April 21, 2021, "because of COVID." Claimant had not tested positive for COVID-19, and she did not produce or provide any medical documentation showing a doctor had required her to self-quarantine due to COVID-19. She also did not present any evidence a member of her family had been diagnosed with COVID-19. Claimant further acknowledged American Addiction had implemented protocols—including

masking, social distancing, and sanitizing—to prevent the spread of COVID-19 in the workplace.

The American Addiction representative testified claimant had been granted a leave of absence from February 22, 2021, through April 21, 2021, to care for an ill relative based on the condition claimant provide medical documentation showing the relative was in fact ill. According to the representative, claimant did not produce the documentation and otherwise failed to return to work as scheduled on April 22, 2021. American Addiction therefore terminated claimant's employment that day.

In its decision following the hearing, the Appeal Tribunal determined claimant was disqualified under N.J.S.A. 43:21-5a from unemployment benefits as of April 18, 2021, because she had left work voluntarily without good cause attributable to the work. The Appeal Tribunal further determined claimant was ineligible for the PUA benefits she had collected from March 14, 2021, through November 13, 2021, because her unemployment during that period "was not due to one of the COVID-19 related reasons in Section 2102(a)(3)(A)(ii)(I) of the CARES Act." The Appeal Tribunal also concluded claimant was obligated to refund \$14,200 in benefits she received for the weeks ending March 20, 2021,

through September 4, 2021, "in accordance with N.J.S.A. 43:21-16(d), Section 2102(a)(3)(A)(ii)(I) of the CARES Act, and N.J.A.C. 12:17-14.2."

Claimant appealed from the Appeal Tribunal decision. In its final agency determination, the Board explained it had carefully considered the Appeal Tribunal's findings and opinion, observed claimant "was given a full and impartial hearing and a complete opportunity to offer any and all evidence," and affirmed the Appeal Tribunal's decision based on the record presented. 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,

48 (2007)). Unless an 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, we "'defer 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) (quoting US Bank N.A. v. Hough, 210 N.J. 187, 200 (2012)). We therefore are "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 offers a precise but limited argument in support of her appeal. She does not challenge the Appeal Tribunal's findings of fact and, similarly,

does not expressly point to any legal error in the Appeal Tribunal's and Board's findings or conclusions. Instead, claimant argues only that the Board erred because COVID-19 "put fear" in her and American Addiction "was NOT a safe place to work" during the beginning of the pandemic. She argues the COVID-19 tests "at the place" were lacking or unreliable, and the staff failed to ensure the patients wore masks. Claimant also asserts that she "feared for [her] life and [her] [f]amily [m]embers" and, for those reasons, she is entitled to PUA benefits and a reversal of the Board's decision. We are not persuaded.

Under the CARES Act, an individual may receive PUA benefits if he or she meets certain statutory requirements. See 15 U.S.C. § 9021. For purposes of PUA eligibility, the Act defines a "covered individual" as one who is "not eligible for regular compensation or extended benefits under State or Federal law" and who provides a self-certification that they are "otherwise able to work and available for work . . . , except the individual is unemployed, partially employed or unable or unavailable to work" due to one of the following requirements:

(aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID-19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency;  
or



(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section[.]

[15 U.S.C. § 9021(a)(3)(A)(ii)(I).]

The New Jersey Department of Labor promulgated regulations to implement the Act. See N.J.A.C. 12:17-12.8. Thus, in order to qualify for PUA benefits in New Jersey, an individual must—at a minimum: (1) be unemployed, partially unemployed, or unable or unavailable to work; and (2) meet one of the qualifying reasons under the statute and associated regulations. See 15 U.S.C. § 9021(a)(3)(A); N.J.A.C. 12:17-12.8(a)(4).


In her brief on appeal, claimant does not address the statutory qualifications for PUA benefits, argue she satisfies any of the qualifications, or point to any evidence in the record before the Appeal Tribunal establishing she satisfied any of the qualifications for such benefits. Our independent review of the evidence presented to the Appeal Tribunal further confirms claimant failed to present any evidence establishing she was entitled to PUA benefits under the CARES Act. And claimant's generalized fear of COVID-19, and her concern she might contract COVID-19 if she returned to work, does not satisfy any of the qualifications for PUA benefits under 15 U.S.C. § 9021(a)(3)(A)(ii)(I). For those reasons, we discern no basis to conclude the Board erred as a matter of

fact or law, or otherwise abused its discretion, by determining claimant was disqualified for PUA benefits as found by the Appeal Tribunal.

We further observe that having correctly determined claimant was disqualified from receiving benefits, the Board was required to seek reimbursement of the unemployment benefits erroneously paid to her, even though she may have received the benefits in good faith. Bannan v. Bd. of Rev., 299 N.J. Super. 671, 674 (App. Div. 1997). We therefore affirm the Board's final agency decision, including its determination claimant must refund \$14,200 in benefits paid to her during her period of disqualification.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION