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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0413-21**

GINA TALIJAN,

Appellant,

v.

**BOARD OF REVIEW,
DEPARTMENT OF LABOR, and
DE CASPERIS, STEVEN JAMES,**

Respondents.

Submitted December 7, 2022 – Decided December 19, 2022

Before Judges Vernoia and Natali.

On appeal from the Board of Review, Department of Labor, Docket No. 239961.

Gina Talijan, appellant pro se.

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

PER CURIAM

Claimant Gina Talijan appeals from a Board of Review (Board) final agency decision adopting an Appeal Tribunal (Tribunal) determination she was disqualified from receiving unemployment compensation benefits because she did not leave her job as a dental hygienist for good cause attributable to the work, see N.J.S.A. 43:21-5(a), and ordering that she refund \$1,908.00 in benefits received during her disqualification, see N.J.S.A. 43:21-16(d). We affirm.

I.

Claimant was employed as a part-time dental hygienist in Dr. Steven James De Casperis's dental practice from November 1999 until her voluntary resignation in May 2020. Her resignation relates to a New Jersey State Board of Dentistry March 2020 directive that ordered dental practices to cease operations partially and treat only those patients who needed emergency dental procedures in light of the COVID-19 pandemic. Dr. De Casperis complied with that directive and closed his office for all but emergency procedures. As a result, claimant worked her last day as a dental hygienist on March 16, 2020, and applied for, and received, unemployment benefits shortly thereafter.

Circumstances changed considerably, however, less than two months later, when, in May 2020, Dr. De Casperis was informed by the New Jersey State Board of Dentistry that dental offices could reopen for additional procedures.

On May 21, 2020, Dr. De Casperis decided to reopen his office to perform dental hygiene procedures and informed his staff. As detailed, infra, the claimant did not appear for work on May 26, 2020, and formally resigned two days later on May 28, 2020.

Claimant applied for unemployment benefits on March 22, 2020. A deputy from the Department's Division of Unemployment Insurance (Deputy) disqualified claimant for unemployment benefits after May 28, 2020, as she voluntarily left work on that date. Separately, on January 21, 2021, the Director of the Division of Unemployment and Disability Insurance (Director) also wrote to claimant and requested a refund of \$1,908.00 in accordance with N.J.S.A. 43:21-16(d) for benefits she improperly received from May 30, 2020 to June 20, 2020.

Claimant appealed both decisions. During the Tribunal's hearing, claimant testified she resigned because she believed Dr. De Casperis improperly reopened his dental practice contrary to the New Jersey State Board of Dentistry's March 2020 directive as she did not believe routine dental hygiene care qualified as an emergency procedure. She also stated her resignation was based on Dr. De Casperis's refusal to provide her and other staff members with

necessary personal protective equipment (PPE) and otherwise comply with the Center for Disease Control (CDC) guidelines related to staff and patient safety.

Dr. De Casperis disputed claimant's testimony. He stated that he met with his staff on May 21, 2020, discussed reopening the office and indicated he would provide all staff, including claimant, with necessary PPE in full compliance with the CDC recommendations including clear plastic face shields, gowns and uniforms, and Level 3 masks as he was unable to obtain N95 masks. Dr. De Casperis also installed ultra-violet sterilizers in all treatment rooms. He further testified that he employed additional precautions such as obtaining patients' medical histories to identify all COVID-19 positive patients and screening patients' temperatures. He also stated contrary to claimant's understanding, the New Jersey State Board of Dentistry permitted him to reopen to provide essential dental services, which included preventive care. He explained dental hygiene procedures qualified as essential services as patients with periodontal disease were at risk for cardiovascular diseases and heart attacks.

In a March 2, 2021 decision, the Tribunal affirmed the Deputy's determination and concluded claimant was disqualified for benefits under N.J.S.A. 43:21-5(a) because she voluntarily resigned without good cause attributable to the work. The Tribunal found claimant failed to provide evidence

supporting her claims and found Dr. De Casperis's testimony more credible. In doing so, it determined Dr. De Casperis complied with CDC guidelines by providing claimant and other employees with the proper PPE to perform their jobs safely. The Tribunal acknowledged that Dr. De Casperis did not provide staff with N95 masks as they were unavailable, but found he nevertheless complied with CDC recommendations by providing alternative, available protective devices. Finally, the Tribunal affirmed the Director's determination that claimant was liable under N.J.S.A. 43:21-16(d) for \$1,908.00 she incorrectly received in unemployment benefits from May 30, 2020, through June 20, 2020, based on her May 28, 2020 resignation.

Claimant appealed the Tribunal's decision to the Board and submitted additional documents not provided to the Tribunal. On September 22, 2021, the Board affirmed the Tribunal's decision modifying it only to indicate claimant also did not qualify for Pandemic Unemployment Assistance (PUA) benefits. In addition, the Board concluded there was no need for additional hearings based on claimant's newly submitted evidence as she "was given a full and impartial hearing and a complete opportunity to offer any and all evidence." This appeal followed.

II.

Before us claimant challenges the Board's decision on two bases. First, she claims she did not resign voluntarily but because it was her belief it was illegal for her to perform dental hygiene procedures. In support, she relies on a New Jersey Dental Association notification advising practitioners that dental procedures and elective surgeries can be performed if "in the licensee's judgment, a postponement will be unlikely to result in an adverse outcome."¹ She maintains this announcement was vague and, in her opinion as a dental hygienist, "postponing a dental cleaning for a few more weeks [would] not cause adverse harm to [her] patients."

Second, claimant contends her employer did not follow State or CDC recommendations for PPE, specifically referencing his failure to obtain N95 masks. In support of the contention, claimant relies on language contained in a Division of Consumer Affairs Administrative Order (Administrative Order).² We disagree with both arguments.

¹ See Thomas A. Rossi & Mitchell L. Weiner, Practice Resumption on May 26, 2020, N.J. Dental Ass'n (May 22, 2020), <https://www.njda.org/news-information/news-archive/2020/05/22/guidelines>.

² See Order: Healthcare Services in Office Practices ¶ C (May 18, 2020).

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)).

To avoid disqualification, a claimant must establish she left work for "good cause attributable to work." Id. at 218; see also N.J.S.A. 43:21-5(a) (providing an employee who "has left work voluntarily without good cause

attributable to such work" is disqualified from unemployment-compensation benefits). "Good cause attributable to such work" is defined in N.J.A.C. 12:17-9.1(b) as "a reason related directly to the individual's employment, which was so compelling as to give the individual no choice but to leave the employment." "In the wake of a voluntary departure from work, the claimant bears the burden 'to establish good cause attributable to such work for leaving.'" Ardan v. Bd. of Rev., 231 N.J. 589, 603 (2018) (quoting N.J.A.C. 12:17-9.1(c)).

An employee has left work "voluntarily" within the meaning of the statute "only if 'the decision whether to go or to stay lay at the time with the worker alone.'" Lord v. Bd. of Rev., 425 N.J. Super. 187, 191 (App. Div. 2012) (quoting Campbell Soup Co. v. Bd. of Rev., 13 N.J. 431, 435 (1953)). Finally, "[m]ere dissatisfaction with working conditions which are not shown to be abnormal or do not affect health, does not constitute good cause for leaving work voluntarily." Medwick v. Bd. of Rev., 69 N.J. Super. 338, 345 (App. Div. 1961).

Applying these principles, we perceive no error in the Board's determination to disqualify claimant from benefits. She maintained before the Tribunal that in light of the New Jersey Dental Association notification it would have been illegal to return to work. Second, she maintained her resignation was primarily animated by her employer's failure to provide sufficient PPE to

address the health concerns related to the COVID-19 pandemic and his failure to comply otherwise with CDC recommendations.

Dr. De Casperis, however, sharply disputed her testimony. Specifically, as noted, he testified that dental hygiene procedures qualified as essential services in light of the cardiovascular risks associated with untreated periodontal disease and routine dental hygiene procedures were essential preventive health measures. In addition, he also testified that he provided PPE for his staff in full compliance with the CDC guidance and the Administrative Order cited by claimant.

At bottom, the Tribunal credited Dr. De Casparis's testimony over claimant's and clearly rejected any contention he subjected claimant to conditions that left her no choice but to resign. N.J.A.C. 12:17-9.1(b). In light of the Tribunal's credibility findings, which warrant our deference and upon which the Board relied, we are satisfied the Board correctly concluded she is disqualified from benefits following her voluntary resignation. We also note that contrary to claimant's arguments, the Administrative Order she relies upon did not require dental practices to provide N95 masks as a condition precedent to reopening. Rather, it required staff wear

PPE, which shall include respiratory protection such as N95 masks, gloves, fluid resistant gowns, hair covers,

eye protection with solid side shields or face shields, to protect mucous membranes of the eyes, nose, and mouth during aerosol-generating procedures as well as those likely to generate splashing or spattering of blood or other bodily fluids, as dictated by the procedure to be performed, consistent with guidelines from the CDC.

[Order: Healthcare Services in Office Practices ¶ C (emphasis added).]

Based on Dr. De Casperis's testimony, he fully complied with that Administrative Order.

We also find no merit in claimant's argument the Board erred by requiring that she refund the benefits paid during her disqualification. N.J.S.A. 43:21-16(d)(1) requires a claimant refund benefits received while she "was disqualified from receiving benefits." Claimant contends she should be exempt from this requirement because she received the benefits in good faith and without fault.


It is well-settled, however, that "N.J.S.A. 43:21-16(d) 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). Requiring the refund of benefits paid when a claimant is disqualified "furthers the purpose of the unemployment compensation laws," prevents the depletion of the "Unemployment Trust Fund" by "recoup[ing] benefits erroneously paid to an

unentitled recipient, however blameless he or she may have been," ibid., and is required by federal law, see 42 U.S.C. § 503, for states receiving federal funds used to assist in the administration of unemployment compensation laws, Bannan, 299 N.J. Super. at 675.

To the extent we have not specifically addressed any of claimant's arguments, it is because we have concluded 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