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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1890-20**

PETRE MOMIROSKI,

Appellant,

v.

**BOARD OF REVIEW,
DEPARTMENT OF LABOR,
and TWO BROTHERS
CONTRACTING, INC.,**

Respondents.

Submitted May 18, 2022 – Decided June 9, 2022

Before Judges Hoffman and Geiger.

On appeal from the Board of Review, Department of Labor, Docket No. 216379.

Petre Momiroski, appellant pro se.

Matthew J. Platkin, Acting 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

Appellant Petre Momirovski appeals from respondent Board of Review's (Board) final agency decision affirming the dismissal of appellant's administrative appeal from a denial of unemployment benefits on the ground the appeal was untimely filed. We affirm.

Appellant worked as an asbestos removal supervisor for respondent Two Brothers Contracting, Inc. (Two Brothers) from October 30, 2000 to March 27, 2020. He was paid on an hourly basis and his work was determined on a project-by-project basis. Appellant returned to work for Two Brothers on July 27, 2020, and worked until October 22, 2020. He was not assigned to any later projects until January 2021.¹

Appellant maintains that during the early days of the COVID-19 pandemic in March 2020, he was "forced" to take a leave of absence from his position due to health concerns for family members. Appellant acknowledged, however, that no health professionals advised him to do so.

Appellant completed a project on March 20, 2020, and had another project scheduled to begin on March 27, 2020, but was advised that the March 27 project was cancelled due to COVID-19. He believed there was no other work available

¹ Appellant filed a second claim for unemployment benefits on October 24, 2020. The new claim has been stayed pending the outcome of this appeal.

to him and filed an unemployment compensation claim on March 29, 2020. Appellant received an eligibility notice dated June 8, 2020, determining him eligible for benefits effective March 29, 2020.

Two Brothers filed an appeal from the eligibility determination on June 16, 2020. During the conference conducted by the Appeal Tribunal on August 26, 2020, Two Brothers' representative testified that all employees received a handout on COVID-19 procedures on March 20 when everyone received their pay checks. The representative also testified that appellant did not quit, he just was not coming in; Two Brothers knew he was coming back to work, but not when. Appellant was still considered an employee after his project ended on March 20, but he did not tell Two Brothers he was not returning after he completed that project. Two Brothers remained open, had jobs throughout the pandemic, and had a supervisor fill in for appellant.

The Appeal Tribunal issued a written decision on August 26, 2020. It found the following facts:

The claimant worked for the above-named employer, as an asbestos supervisor, from [October 30, 2000] through [March 20, 2020], when he went out on an approved leave of absence to self-quarantine. The claimant's wife asked him to self-quarantine.

During the period from [March 29, 2020] through [July 25, 2020], the claimant did not report to work because

he was fearful of contracting and transmitting COVID-19 to his wife due to her health conditions. The claimant was not advised by a medical professional to self-quarantine. The employer had full-time work available for the claimant from [March 29, 2020] through [July 25, 2020]. The claimant returned to work on [July 27, 2020].

A claim for unemployment benefits was filed as of [March 20, 2020], which established a weekly benefit rate of \$713.00, a partial weekly benefit rate of \$855.00, and a maximum benefit amount of \$18,538.00. The claimant last reported for benefits for the week ending [August 1, 2020]. Division records reflect that the claimant reported benefits in excess of his partial weekly benefit rate for the week ending [August 1, 2020].

The Appeal Tribunal provided the following analysis:

N.J.S.A. 43:21-4 provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if it appears that:

(c)[(1)] The individual is able to work, and is available for work, and has demonstrated to be actively seeking work

In this case, the claimant did not report to work from [March 29, 2020] through [July 25, 2020], even though the employer had full-time work available, as he was fearful of contracting and transmitting COVID-19 to his wife due to her health conditions. The claimant was not advised by a medical professional to self-quarantine due to COVID-19. While the Tribunal is sympathetic to the claimant's health concerns, he was unavailable for work during the period he was self-quarantining. Accordingly, the claimant is ineligible for benefits from

[March 20, 2020] through [July 25, 2020], in accordance with N.J.S.A. 43:21-4(c).

As the claimant reported wages in excess of his partial weekly benefit rate for the week ending [August 1, 2020] and he has not reported for benefits after [August 1, 2020], the matter of the claimant's availability as of [July 26, 2020] is academic.

Based on those findings and analysis, the Appeal Tribunal determined that appellant was "ineligible for benefits from [March 29, 2020 through July 25, 2020], as [appellant] was unavailable for work, in accordance with N.J.S.A. 43:21-4(c)."² The following notice was attached to the Appeal Tribunal's decision:

IMPORTANT: This decision will become final, unless, within twenty (20) days of the date of mailing or notification, a written appeal is filed with the Board of Review If the last day allowed for the appeal occurs on a Saturday, Sunday, or legal holiday, the appeal will be accepted if received or postmarked on the next business day. The appeal period will be extended if good cause for late filing is shown. Good cause exists in situations where it can be shown that the delay was due to circumstances beyond the control of the appellant, which could not have been reasonably foreseen or prevented.

² Appellant was also deemed ineligible for Pandemic Unemployment Insurance under the Coronavirus Aid, Relief, and Economic Security Act, 15 U.S.C. §§ 9001 to 9141.

On September 4, 2020, the Director of Unemployment Insurance sent appellant a written request for a refund of overpaid unemployment benefits. The notice advised appellant that he had the right to appeal the request for refund and repayment "within seven (7) calendar days after delivery or within ten (10) calendar days after the mailing of this notice." The notice stated that "[t]he appeal period will be extended if good cause for late filing is shown. Good cause exists in situations where it can be shown that the delay was due to circumstances beyond the control of the appellant, which could not have been reasonably foreseen or prevented."

Appellant filed an appeal dated September 17, 2020, from the Appeal Tribunal's decision, some twenty-two days after the date of mailing of the Appeal Tribunal's decision.³ His letter of appeal stated the following basis for the appeal:

During the period in question, self quarantine was strongly recommended at all stages of government, including the Doctors in charge of public health. While I was not directly advised by a medical professional, I was given the impression by the medical Doctors consulting with the State of New Jersey that self-quarantine was prudent due to my wife's condition. There is no indication that a medical professional wouldn't advise self-quarantine given my situation.

³ The notice of appeal was received by the Board on September 18, 2020.

Further, I must contest my employer's claim that they had full-time work available during the period above. The only notice regarding work given to me was on [March 29, 2020]. That was a verbal notice given over the phone that their current project was postponed due to COVID. In the days following I attempted to get in touch with them multiple times regarding my situation. However, at no point did they indicate that any work was available for me.

Irregardless, the project's description stated that it was hands on demolition (without asbestos) – requiring separate and proper licensure by the State of New Jersey. My position at Two Brothers is as an Asbestos Supervisor, and I am neither certified [nor] qualified to perform hands on demolition. Even if the project was not postponed due to COVID, as I was [led] to believe by my employer, I would not be able to legally work on it.

Finally, the Tribunal should note that Two Brothers Construction chose to downsize due to COVID during the pandemic. I was told that their remaining team was only [five] people, every one else was laid off. While I am unsure why the company didn't follow up with me regarding the status of my position, it's unlikely they would keep me around given my lack of qualifications regarding the project they told me was postponed due to COVID.

On January 15, 2021, the Board dismissed the appeal as untimely, noting the appeal was filed on September 18, 2020, "subsequent to the expiration of the statutory period of twenty days from the date of mailing of the Appeal Tribunal decision," citing N.J.S.A. 43:21-6(c). The Board found that good cause was not

"shown for such late filing since [appellant] did not demonstrate that the delay in filing his appeal was beyond his control or for circumstances which could not have been reasonably foreseen as described under N.J.A.C. 12:20-4.1(h)[(1) and (2).]" This appeal followed.

In this appeal, appellant raises the following arguments:

POINT I

INDIVIDUALS WHO I BELIEVED COULD TESTIFY IN SUPPORT OF MY CLAIMS REFUSED WITH LATE NOTICE AND I COULD NOT ASK FOR AN EXTENSION TO FILE. THIS CONSTITUTES A CIRCUMSTANCE BEYOND MY CONTROL AND IS GOOD CAUSE FOR LATE FILING.

POINT II

LEAVING MY POSITION BECAUSE OF LACK OF WORK DUE TO COVID-19 AND CONCERNS OVER SAFE WORKING CONDITIONS CONSTITUTES GOOD CAUSE AND SHOULD NOT HAVE DISQUALIFIED ME FROM BENEFITS.

POINT III

FURTHER, THIS PROCEEDING HAS ALSO BLOCKED ME FROM RECEIVING UNEMPLOYMENT BENEFITS FOR A PERIOD THAT WOULD HAVE OTHERWISE CONSTITUTED A SEPARATE CLAIM. I SHOULD NOT HAVE BEEN DISQUALIFIED FROM BENEFITS FOR AN UNRELATED CLAIM.

The scope of our review of an administrative agency's final determination is strictly limited. Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997); see also Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) ("Judicial review of agency determinations is limited."). "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)).

An agency's decision may not be disturbed on appeal unless it is arbitrary, capricious, unreasonable, or inconsistent with applicable law. Ibid. "If the Board's factual findings are supported 'by sufficient credible evidence, courts are obliged to accept them.'" Ibid. (quoting Self v. Bd. of Rev., 91 N.J. 453, 459 (1982)). However, when an agency overlooks or undervalues crucial evidence, a reviewing court may set aside the agency's decision. Cottman v. Bd. of Rev., 454 N.J. Super. 166, 171 (App. Div. 2018) (quoting Trantino v. N.J. State Parole Bd., 166 N.J. 113, 192 (2001)). Finally, the record on appeal "restricts the parties to issues raised below and the record created before the agency." J.K. v. N.J. State Parole Bd., 247 N.J. 120, 124 (2021).

The Board's findings that appellant had not timely filed an appeal from the Appeal Tribunal's decision and failed to show good cause for the untimeliness of his submission were supported by the record and applicable law. Accordingly, we affirm.

In a letter mailed with his notice of appeal to this court, appellant stated:

The reason for such late filing is that I was looking for the written corroboration of coworkers to present as evidence in support of my appeal. Unfortunately, they refused for fear of reprisal from the employer and I was unable to ask for an extension of time before the deadline passed.

Appellant did not provide these purported reasons for the delay to the Board when he filed his appeal from the Appeal Tribunal's decision. Appellant's unsupported claim that he was unable to ask for a filing extension is belied by the record. The notice attached to the Appeal Tribunal's decision advised appellant that "[t]he appeal period will be extended if good cause for late filing is shown." It also defined "good cause." Despite being so advised, appellant did not seek an extension or advise the Board of the reason for the delayed filing.

N.J.S.A. 43:21-6(c) directs that:

The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the board of review, unless further appeal is initiated. . . within

[twenty] days after the date of notification or mailing of such decision

In Rivera v. Bd. of Rev., 127 N.J. 578 (1992), the Supreme Court established a "good cause" exception to the twenty-day period for filing appeals under N.J.S.A. 43:21-6(c). Subsequently, the Board promulgated a regulation establishing the factors to be considered in determining good cause. N.J.A.C. 12:20-4.1(h) provides:

A late appeal shall be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause exists in circumstances where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or
2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

Appellant acknowledges that he failed to submit his appeal within the required twenty-day time period. Appellant contends that the delay in filing was due to the unexpected refusal of his coworkers to provide written or testimonial corroboration of his claims. He did not provide those reasons to the Board. See Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (noting that "our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such presentation was available unless the

questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest" (quoting State v. Robinson, 200 N.J. 1, 20 (2009)) (quoting another source)). Here, no such issues are raised. Moreover, even if appellant raised the reasons he now relies on, they fail to adequately excuse why the appeal was filed late. Because appellant submitted his appeal to the Board past the twenty-day time period and failed to establish good cause for the delay, we affirm the Board's decision dismissing his appeal as untimely.

Because we affirm the Board's dismissal of his appeal as untimely, we do not address appellant's arguments challenging the Appeal Tribunal's decision.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION