

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0976-13T3

AFFOTEY AGO,

Appellant,

v.

BOARD OF REVIEW, DEPARTMENT
OF LABOR and VERIZON
NEW JERSEY, INC.,

Respondents.

Submitted September 22, 2014 – Decided November 19, 2014

Before Judges Lihotz and St. John.

On appeal from the Board of Review,
Department of Labor, Docket No. 411,918.

Affotey Ago, appellant pro se.

John J. Hoffman, Acting Attorney General,
attorney for respondent Board of Review
(Lewis A. Scheindlin, Assistant Attorney
General, of counsel; Nicole M. DeMuro,
Deputy Attorney General, on the brief).

Respondent Verizon New Jersey, Inc. has not
filed a brief.

PER CURIAM

Appellant Affotey Ago appeals from a final determination of the Board of Review (Board) dismissing his administrative appeal as untimely, pursuant to N.J.S.A. 43:21-6(c). Our examination of the record satisfies us that the Board's final decision was properly premised on facts in the record and is consonant with the relevant statutory provisions. Accordingly, we affirm.

Appellant worked as a technician for Verizon New Jersey, Inc., from June 30, 1997 to April 12, 2012, when he voluntarily left work by accepting an early retirement incentive policy or program. Appellant filed a claim for unemployment compensation benefits on July 29, 2012. On August 27, 2012, a Deputy of the Division of Unemployment and Disability Insurance (Division) reviewed his application, denied the claim and imposed a disqualification for benefits from April 8, 2012 on the ground that appellant left work voluntarily without good cause attributable to the work. See N.J.S.A. 43:21-5(a).

Appellant appealed from the Deputy's determination on January 29, 2013. Although the Appeal Tribunal (Tribunal) mailed its decision affirming the Deputy's determination to appellant on February 22, 2013, appellant did not file his appeal of the Tribunal's decision until March 21, 2013. Because this delay exceeded the twenty-day statutory maximum allowed under N.J.S.A. 43:21-6(c), the Board dismissed the appeal as

untimely on August 26, 2013. It is from this dismissal appellant seeks relief.

Our scope of review of an administrative agency action is limited and highly deferential. Unless the Board's decision is "arbitrary, capricious, or unreasonable, or [] not supported by substantial credible evidence in the record as a whole," it will be affirmed. Barrick v. State, 218 N.J. 247, 259 (2014) (alteration in original) (citations and internal quotation marks omitted). In making this determination, a reviewing court must examine: "(1) whether the agency's decision conforms with relevant law; (2) whether the decision is supported by substantial credible evidence in the record; and (3) whether, in applying the law to the facts, the administrative agency clearly erred in reaching its conclusion." Twp. Pharmacy v. Div. of Med. Assistance and Health Servs., 432 N.J. Super. 273, 283–84 (2013) (citing In re Stallworth, 208 N.J. 182, 194 (2011)).

We also review factual findings made by an administrative agency deferentially. On appeal, "'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 Review, 152 N.J. 197, 210 (1997) (quoting Charatan v. Bd. of Review, 200 N.J. Super. 74, 79 (App. Div.

1985)). So long as the "factual findings are supported 'by sufficient credible evidence, courts are obliged to accept them.'" Ibid. (quoting Self v. Bd. of Review, 91 N.J. 453, 459 (1982)).

The time for appealing the Tribunal's decision to the Board is set forth in N.J.S.A. 43:21-6(c), which provides in pertinent part:

The parties shall be duly notified of [an appeal] 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 20 days after the date of notification or mailing of such decision.

[N.J.S.A. 43:21-6(c).]

Here, the Board found that appellant did not file his appeal within the twenty-day statutory window.

Statutorily-prescribed deadlines for administrative appeals are binding so long as they comport with due process by allowing those who have a right to appeal the time to exercise that right. See Rivera v. Bd. of Review, 127 N.J. 578, 590 (1992). A rigid approach to absolute appeal periods, to satisfy due process concerns, must be tempered by the allowance for good cause exception. Garzon v. Bd. of Review, 370 N.J. Super. 1, 6 (App. Div. 2004) (citing Rivera, supra, 127 N.J. at 590). To this end, the Board has promulgated a regulation establishing

factors that constitute good cause for a late appeal, which states:

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:

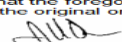
1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or
2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

[N.J.A.C. 12:20-4.1(h).]

Here, we are satisfied that appellant received the process due in that he was adequately apprised of the appeal deadline and requirements, yet failed to file a timely appeal. The Board determined appellant did not show good cause for his late filing. Consequently, absent any showing of good cause, appellant's failure to file his appeal within the statutorily-imposed deadline warrants dismissal of his administrative appeal to the Board.

We conclude that because the Board's decision was in accordance with the governing law, supported by the record, and reasonable, we have no occasion to interfere.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION