

Circuit Court for Wicomico County  
Case No. C-22-CV-21-000240

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND\*\*

No. 1026

September Term, 2022

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IN THE MATTER OF TONIE MANN

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Graeff,  
Ripken,  
Tang,

JJ.

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Opinion by Ripken, J.

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Filed: July 12, 2023

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

\*\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

The appellant, Talia Mann (formerly known as Tonie Mann), appeals from a ruling of the Circuit Court for Wicomico County, which affirmed the decision of the Board of Appeals (the “Board”) in favor of the appellee, the Maryland Department of Labor (the “Department”). The Board concluded that Mann was ineligible to backdate her application for unemployment insurance benefits from July to March of 2020. The circuit court upheld the Board’s decision.

For the following reasons, we shall affirm the judgment of the circuit court.

### **ISSUES PRESENTED FOR REVIEW**

Mann, representing herself, presents three issues, which we consolidate and rephrase:<sup>1</sup>

- I. Whether the Board erred in determining that Mann was ineligible to backdate her claim for unemployment insurance benefits under the CARES Act.

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<sup>1</sup> Rephrased from:

- I. Should claimant be denied backdated payments on the basis of timely filing when there was no understanding or notifying claimant of new eligibility under the CARES Act?
- II. Were there any exceptions without reason made to filing times for any other applicants during the time of denial of the appellant’s claim[?]
- III. Did the Department of Labor have their office open and running as normal to allow the proper filing for benefits?

The Department presents the issue as follows:

Did the Board properly apply the law when it determined that Ms. Mann’s claim for unemployment insurance benefits could not be backdated to March 22, 2020?

II. Whether the Board erred in determining that Mann was ineligible to backdate her claim for unemployment insurance benefits under COMAR 09.32.02.03D.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On July 17, 2020, Mann filed a claim for unemployment insurance benefits. The Department permitted Mann to receive those benefits retroactively as of July 5, 2020<sup>2</sup> under section 8-901 of the Labor and Employment article of the Maryland Code (“LE”).<sup>3</sup> Mann then requested to backdate her benefits to March 22, 2020 under the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. Mann’s request was denied by a claims examiner for the Department.

After an evidentiary hearing, the hearing examiner affirmed the claims examiner’s determination. At that hearing, Mann testified that she did not file for benefits between March and July of 2020 because she believed that she was “ineligible due to a lack of work history.”<sup>4</sup> Mann acknowledged that, after she separated from her employer on January 24,

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<sup>2</sup> Under the Code of Maryland Regulations 09.32.02.03C(1), the “[e]ffective date of an initial or reopened claim is the first day of the week in which an individual reports, registers, and files the initial or reopened claim[.]” Because Mann filed her claim on Friday, July 17, the effective date of her claim should have been Sunday, July 12. *See id.* Thus, the Department did benefit Mann by backdating her claim an extra week to Sunday, July 5.

<sup>3</sup> LE section 8-901 provides as follows: “An individual who files a claim in accordance with regulations adopted under this title is eligible to receive benefits with respect to any week if the Secretary finds that the individual meets the requirements of this subtitle.”

<sup>4</sup> Mann also testified that she had attempted to file for unemployment benefits in September of 2019, but was told that she “did not have enough work history then.” Additionally, as we discuss *infra*, Mann testified that she spoke with representatives of the Department of Social Services in January of 2020 and was “told that she was not eligible” for unemployment benefits because of her lack of work history.

2020 she did not contact the Department until July 17, 2020. Per Mann: “My reasoning for still claiming that I should be awarded these backdated payments is because I was not made aware . . . that I was eligible under the CARES Act at that time.”

The hearing examiner determined that Mann was ineligible for benefits from March 22, 2020, to July 4, 2020, because she “failed to file valid and proper claims for benefits within the meaning of [LE] Section 8-901 and [(“Code of Maryland Regulations”)] COMAR 09.32.02.04B.”<sup>5</sup> The hearing examiner also concluded that Mann’s request did not fall within any of the COMAR 09.32.02.03D exceptions, which allow for claims to be backdated. The Board’s decision adopted the hearing examiner’s findings of fact and conclusions of law. Additional facts will be included as they become relevant to the issues.

### **DISCUSSION**

“When an administrative agency’s decision is before this Court, we review the agency’s decision; we do not review the circuit court’s decision.” *J.H. v. TidalHealth Peninsula Reg’l, Inc.*, 253 Md. App. 111, 119 (2021). Judicial review of administrative adjudications of unemployment insurance benefits is governed by LE section 8-5A-12(d), which provides:

(d) In a judicial proceeding under this section, findings of fact of the Board of Appeals are conclusive and the jurisdiction of the court is confined to questions of law if:

(1) findings of fact are supported by evidence that is competent, material,

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<sup>5</sup> As noted, the “[e]ffective date of an initial or reopened claim is the first day of the week in which an individual reports, registers, and files the initial or reopened claim[.]” COMAR 09.32.02.03C(1). To keep receiving benefits, unemployed individuals must file continued claims each week that they are unemployed. COMAR 09.32.02.04B.

and substantial in view of the entire record; and  
(2) there is no fraud.

Accordingly, under LE section 8-5A-12(d), our review is limited to “(1) the legality of the decision and (2) whether there was substantial evidence from the record as a whole to support the decision.” *Thomas v. Dep’t of Lab., Licensing, & Regul.*, 170 Md. App. 650, 657 (2006) (quoting *Dep’t of Lab., Licensing, & Regul. v. Hider*, 349 Md. 71, 77–78 (1998)). Therefore, a “reviewing court may not reject a decision of the Board supported by substantial evidence unless that decision is wrong as a matter of law.” *Dep’t. of Lab. v. Boardley*, 164 Md. App. 404, 417 (2005) (quoting *Hider*, 349 Md. at 78). “The test for determining whether the Board’s findings of fact are supported by substantial evidence is whether reasoning minds could reach the same conclusion from the facts relied upon by the Board.” *Id.* (quoting *Hider*, 349 Md. at 78).

**I. MANN WAS INELIGIBLE TO BACKDATE HER CLAIM UNDER THE CARES ACT.**

Mann contends that she was eligible to have her benefits claim backdated under the CARES Act<sup>6</sup> and that the Department should have notified her about her alleged eligibility under the CARES Act. In support, Mann emphasizes several notices and letters from the United States Department of Labor discussing the responsibility of individual states to

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<sup>6</sup> Mann argues that her benefits should be backdated to January 27, 2020. However, because Mann only requested the Department to backdate her benefits to March 22, 2020, whether Mann’s claim should have been backdated to earlier is not before this Court. *See Md. Off. of People’s Couns. v. Md. Pub. Serv. Comm’n*, 226 Md. App. 176, 204 (2015) (“[I]n an action for judicial review of an adjudicatory decision by an administrative agency, a reviewing court ordinarily ‘may not pass upon issues presented to it for the first time on judicial review and that are not encompassed in the final decision of the administrative agency.’” (quoting *Brodie v. Motor Vehicle Admin. of Md.*, 367 Md. 1, 4 (2001))).

notify eligible individuals about the CARES Act. In response, the Department asserts that Mann was not eligible to apply for benefits under the CARES Act in 2020 and that the Department took all reasonable steps to inform the public about the CARES Act. We agree with the Department.

In March of 2020, Congress enacted the CARES Act, 15 U.S.C. section 9001, *et seq.*, which created two temporary, federal unemployment insurance programs relevant here: Pandemic Unemployment Assistance (“PUA”) and Pandemic Emergency Unemployment Compensation (“PEUC”). 15 U.S.C. §§ 9021, 9025. PUA provided assistance to individuals who did not qualify for regular unemployment compensation, 15 U.S.C. § 9021(a)(3)(A)(i), and PEUC permitted individuals to continue receiving assistance after they exhausted their regular unemployment benefits. 15 U.S.C. § 9025(a)(2)(A); *see* U.S. Dep’t of Labor, Unemployment Insurance Relief During Covid-19 Outbreak, Frequently Asked Questions <https://www.dol.gov/coronavirus/unemployment-insurance#faqs> (“To qualify for PUA benefits, you must not be eligible for regular unemployment benefits[,]” and PEUC “covers most individuals who have exhausted all rights to regular unemployment compensation under state or federal law[.]”) (Last visited July 10, 2023).

When Mann filed for benefits in July of 2020, she qualified for and received regular unemployment insurance benefits under LE section 8-901. Therefore, Mann was ineligible to receive benefits under PUA and, because Mann had not exhausted her regular unemployment insurance benefits, she was also ineligible under PEUC. *See* 15 U.S.C.

§§ 9021(a)(3)(A)(i), 9025(a)(2)(A).<sup>7</sup> Hence, the Board did not err in determining that Mann was ineligible to backdate her claim under the CARES Act.

**II. MANN WAS INELIGIBLE TO BACKDATE HER CLAIM UNDER COMAR 09.32.02.03D.**

COMAR 09.32.02.03D describes when an initial or reopened claim for unemployment insurance benefits may be backdated:

(1) A claim may be backdated when a claimant reports partial earnings for a week before the initial claim, to the Sunday of that week provided the claim is filed not later than:

(a) 30 days immediately following the close of that week, or

(b) 2 weeks after the date the partial wages are paid;

(2) A transitional claim shall be effective the day following the end of the preceding benefit year;

(3) Severe weather conditions exist, as declared by the Secretary;

(4) Clerical error attributable to the Department occurs;

(5) The office to which the claimant is instructed by the Secretary to report is closed for a reason other than that the day is not a working day;

(6) A claim may be backdated when the claimant did not file a claim in reasonable reliance on an invalid agreement to waive, release, or commute the claimant's rights to benefits as prohibited by the Unemployment Insurance Law.

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<sup>7</sup> Given that Mann was ineligible for benefits under the CARES Act when she applied for unemployment insurance benefits in July of 2020, we need not decide whether the Department sufficiently notified Mann about her alleged eligibility under the CARES Act. We note, however, the Board's finding that: "The Agency prominently posted information about the CARES Act . . . on the Agency's website" and "disseminated widely available press releases related to the program." Mann also acknowledged that the Department attempted to notify households of CARES Act eligibility through "social media postings and new[s] releases."

Mann’s claim did not fall under any of these exceptions. She did not report partial earnings, and she did not file a transitional claim, which is defined as “the first claim filed at the expiration of a benefit year requesting a determination of eligibility and determination of a new benefit year.” COMAR 09.32.02.02B(10)(b). Moreover, neither severe weather nor a clerical error prevented Mann from filing her claim.

Mann argues that her claim falls under COMAR 09.32.02.03D(5) and (6) because, according to Mann, the Department “was closed during the times that [Mann] did not file claims” and Mann “was led to believe she was still ineligible[.]” Mann emphasizes that she spoke to representatives of the Department of Social Services (“DSS”) in January of 2020 and “was told that she was not eligible” for unemployment insurance benefits. In support, Mann relies on previous decisions of the Board addressing the backdating of unemployment insurance benefit claims.

The Department contends that Mann’s arguments regarding COMAR 09.32.02.03D(5) and (6) are not preserved for our review, because Mann did not raise these arguments during the administrative proceedings. In addition, the Department argues: “Although the Department’s buildings were closed during this time period due to the pandemic, it was nonetheless accepting claims for benefits by telephone. At no time did the Department cease working or stop accepting benefit applications.” Furthermore, the Department asserts that Mann “presented no evidence that her failure to apply for benefits in March 2020 occurred because she relied on an invalid agreement to waive, release, or commute her rights to benefits.”



“[I]n an action for judicial review of an adjudicatory decision by an administrative agency, a reviewing court ordinarily ‘may not pass upon issues presented to it for the first time on judicial review and that are not encompassed in the final decision of the administrative agency.’” *Md. Off. of People’s Couns. v. Md. Pub. Serv. Comm’n*, 226 Md. App. 176, 204 (2015) (quoting *Brodie v. Motor Vehicle Admin. of Md.*, 367 Md. 1, 4 (2001)). The hearing examiner’s decision explained: “[T]he reasons for [Mann’s] improper claims are not legally sufficient to allow the backdating of these claims pursuant to COMAR 09.32.02.03(D)[.]” The Board’s decision adopted the hearing examiner’s conclusions of law. Hence, because the final decision of the administrative agency encompassed COMAR 09.32.02.03D’s applicability, Mann’s arguments are preserved for our review.

Turning to the merits of Mann’s arguments, the Board decisions which Mann relies on are distinguishable from the current case. In *Deborah Lee*, the agency’s telecert system erroneously denied the petitioner’s timely claims and agency representatives repeatedly failed to answer the petitioner’s phone calls. 1623-BH-02, at 2–3 (Md. Dep’t of Labor June 12, 2002) <https://labor.maryland.gov/uiappeals/decisions/pdf/1623-BH-02.pdf>. Under those circumstances, the Board ruled that due process required backdating the petitioner’s claims. *Id.* at 3. Similarly, in *Arie Spigel*, the petitioner sent a timely claim card, but the agency had no record of receiving that card. 580-BH-85, at 2 (Md. Dep’t of Labor July 31, 1985) <https://www.dllr.state.md.us/uiappeals/decisions/pdf/580-BH-85.pdf>. In addition, the petitioner went to the local agency office but was unable to discuss his case with an

employee. *Id.* Under those circumstances, the Board ruled that the petitioner was entitled to receive benefits for the week covered by the timely mailed claim card and the week that he went to the local office. *Id.* at 3.

In contrast, Mann does not claim that she was unable to file her application because of a telecommunications or postal error. Mann argues that “she was prevented from speaking to a representative” “[d]ue to the Unemployment office being shut down during the pandemic[,]” but provides no evidentiary support for her claim that the Department was “closed” from March of 2020 to July of 2020 within the meaning of COMAR 09.32.02.03D(5). There is no indication in the record that the Department stopped processing unemployment benefit applications or barred claimants from submitting applications online or over the phone during the pandemic. Mann also did not attempt to contact the Department during the pandemic prior to filing her claim on July 17, 2020.

With respect to backdating claims under COMAR 09.32.02.03D(6), Mann relies on another Board decision, *Charlyce M. Johnson v. Anne Arundel Cnty. Econ. Opportunity Comm’n. Inc. (Beverly Brown)*. 575-BH-00 (Md. Dept. of Labor March 24, 2000) <https://www.dllr.state.md.us/uiappeals/decisions/pdf/575-BH-00.pdf>. In *Charlyce M. Johnson*, the petitioner’s former employer provided her with a contract, containing the following provision, which incorrectly advised the petitioner about her eligibility for unemployment benefits:

Maryland Unemployment Insurance Law applies to non-profit organizations with professional and non-professional employees, including teachers and teachers aides, which states that these employees are **ineligible to collect unemployment benefits** due to the fact that there is a reasonable assurance

that the individual will perform services in the same capacity for the organization when [the] academic school year begins. (Emphasis added.)

*Id.* at 2 (alteration in original). Given the petitioner’s reliance on the assurance noted in the contract, the Board determined that permitting the petitioner to backdate her claim for the summer of 1996 would be appropriate. *Id.* at 5–6. However, the Board additionally concluded that the doctrine of laches<sup>8</sup> applied to the petitioner’s earlier claims and that the petitioner “also had an obligation, at some reasonable point in time, to contact the Agency or other legal authority to determine what her rights were, with regard to filing for unemployment insurance benefits.” *Id.* at 5. Therefore, the Board determined that the petitioner failed to file proper claims for the summers of 1994 and 1995. *Id.* at 6.

Unlike the matter before the Board in *Charlyce M. Johnson*, Mann’s case does not involve Mann relying on an incorrect contract provision about unemployment benefits. Mann claims to have relied on invalid assurances from DSS in January of 2020, that Mann’s work history disqualified her from receiving unemployment benefits. However, Mann’s conversation with a representative of DSS was not included within an “agreement to waive, release, or commute [Mann’s] right to benefits.” COMAR 09.32.02.03D(6). Moreover, given that the Department, rather than DSS, administers the unemployment insurance benefits program, *see* LE § 8-901, it would not have been reasonable for Mann

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<sup>8</sup> The doctrine of laches “applies whe[re] there is an unreasonable delay in the assertion of one [party’s] rights and that delay results in prejudice to the opposing party.” *Jones v. State*, 445 Md. 324, 339 (2015) (internal quotation marks omitted) (quoting *State Center, LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 586 (2014)). The purpose of the doctrine “is to protect ‘against stale claims.’” *Id.* (quoting *State Center, LLC*, 438 Md. at 585).

to rely on DSS’s assertion regarding Mann’s eligibility for benefits. Mann did not contact the Department about her eligibility for benefits after she became unemployed in January of 2020. According to Mann’s testimony, Mann did not communicate with the Department in 2020, prior to July. Hence, Mann’s failure to apply for benefits was not based on “reasonable reliance on an invalid agreement to waive, release, or commute [her] rights to benefits as prohibited by the Unemployment Insurance Law.” COMAR 09.32.02.03D(6).

For all these reasons, there was substantial evidence to support the Board’s findings, and we find no error in the Board’s legal conclusions.

**JUDGMENT OF THE CIRCUIT COURT  
FOR WICOMICO COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**