

ARKANSAS COURT OF APPEALS

DIVISION III

No. E12-350

WANDA J. OSWALD

APPELLANT

V.

DIRECTOR, DEPARTMENT OF  
WORKFORCE SERVICES AND BELK  
CONWAY COMMONS

APPELLEES

Opinion Delivered November 28, 2012

APPEAL FROM THE ARKANSAS  
BOARD OF REVIEW  
[NO. 2012-BR-00746]

REMANDED FOR ADDITIONAL  
EVIDENCE

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**RAYMOND R. ABRAMSON, Judge**

Wanda Oswald was employed as a sales associate for Belk Conway Commons until she was discharged for absenteeism. The Department of Workforce Services (Department) initially granted unemployment benefits, holding that the reasons for Oswald's absences were beyond her control and that she had made the proper notifications to her employer; thus, her conduct did not constitute deliberate and willful intent against the interest of the employer. Her employer appealed to the Appeals Tribunal (Tribunal). Neither Oswald nor her employer was present at the hearing before the Tribunal. As a result, based on the record before it, the Tribunal reversed the decision of the Department, finding that Oswald was aware of the attendance policy, had received progressive discipline regarding her attendance, and had continued to be absent. Therefore, the Tribunal found that she was discharged from her last work for misconduct in connection with the work and denied her benefits.

The decision of the Tribunal was issued on February 13, 2012, and Oswald had until March 5, 2012, to appeal the decision. The record reflects that Oswald filed her notice of appeal to the Board of Review (Board) on March 7, 2012—two days past the deadline. At the *Paulino*<sup>1</sup> hearing, however, Oswald alleged that she had appealed the decision prior to the deadline (although she could not remember the exact date) and that she was called by someone from the Department a couple of days later and told that she had been given the wrong form. She stated that she then went back to the office and filled out the correct forms. The Board found that her appeal was untimely based on the documents in the record and the testimony from the hearing.

On appeal, Oswald provides us with a copy of a form signed on March 5, 2012, which purports to be a document requesting an appeal to the Tribunal and which presumably is the erroneous form she filled out prior to the deadline. This document supports her version of events, but it is inexplicably absent from the record before the Board.

Arkansas Code Annotated section 11-10-529(c)(2)(a)(Repl. 2012), provides the following: “No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the board.” Because this document was attached to Oswald’s petition and is absent from the record, we are prohibited from considering it. However, because it appears this document was improperly omitted from the record before the Board, we remand for the consideration of additional evidence in light of this information.

Remanded for additional evidence.

ROBBINS and GLOVER, JJ., agree.

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<sup>1</sup>*Paulino v. Daniels*, 269 Ark. 676, 599 S.W.2d 760 (Ark. App. 1980).