

ARKANSAS COURT OF APPEALS

DIVISION II
No. E12-712

CHRISTINA HANEY

APPELLANT

V.

DIRECTOR, ARKANSAS
DEPARTMENT OF WORKFORCE
SERVICES

APPELLEE

Opinion Delivered February 13, 2013

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2011-BR-03519]

REVERSED

RITA W. GRUBER, Judge

In this unbriefed unemployment-benefits case, Christina Haney appeals a decision of the Arkansas Board of Review that found a \$2940 overpayment of benefits and ordered her to repay the Department of Workforce Services. We reverse because the employer failed to respond to the Department's original notice, awarding Ms. Haney payment, within the mandatory ten-day period.

In appeals of unemployment-compensation cases, "we . . . review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board of Review's findings." *Coker v. Director*, 99 Ark. App. 455, 456, 262 S.W.3d 175, 176 (2007). The findings of fact made by the Board of Review are conclusive if supported by substantial evidence; even when there is evidence upon which the Board might have reached a different decision, the scope of judicial review is limited to a determination of whether the Board could



have reasonably reached its decision based on the evidence before it. *Id.* Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* Issues of the credibility of witnesses and weight to be afforded their testimony are matters for the Board of Review to determine. *Bradford v. Director*, 83 Ark. App. 332, 338, 128 S.W.3d 20, 23 (2003).

Arkansas Code Annotated section 11-10-521(b)(2)(A) provides that if a last employer fails to respond within ten calendar days to a Department of Workforce Services' notice regarding unemployment benefits, "the last employer shall be deemed to have waived the right to respond." If the employer's right to respond has been deemed waived, "the director may accept the statement given by the claimant as his or her reason for separation from the last employer and may base his or her determination on the statement given by the claimant." Ark. Code Ann. § 11-10-521(b)(2)(B) (Repl. 2012).

On May 26, 2011, Ms. Haney filed for unemployment benefits, claiming that she had been laid off due to the job's being finished, and the Department sent notice to her last employer. On June 5, 2011, the Department began paying her weekly unemployment-compensation benefits.

It was not until July 19, 2011, that the employer responded to the Department's notice. Based on information in the employer's response, the Department issued two agency determinations: one disqualifying Ms. Haney for benefits under Ark. Code Ann. § 11-10-532, finding that she had voluntarily left last work without good cause; and one declaring that she had been overpaid \$2940 and pursuant to Ark. Code Ann. § 11-10-532(b)(1)(A) was liable



to repay the amount. The Appeal Tribunal and the Board of Review affirmed both determinations.

In its written decision, the Board found that the employer's delay in responding to the Department's notice was the main factor in Ms. Haney's being overpaid benefits. The Department used information provided in the employer's response to determine that Ms. Haney was not entitled to the benefits she received, thus resulting in overpayment. However, after the ten-day period has run, the employer is deemed to have waived its right to respond, and the statute authorizes the Department to base a decision on information provided by the claimant. Therefore, the Department incorrectly considered information provided by the employer. Accordingly, we hold that the Board could not have reasonably reached its decision, and we reverse.

Reversed.

HARRISON and WYNNE, JJ., agree.