

ARKANSAS COURT OF APPEALS

DIVISION II

No. E12-840

LARRY WILLIAMS

APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES

APPELLEE

Opinion Delivered March 13, 2013

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2012-BR-00048]

REVERSED and REMANDED

WAYMOND M. BROWN, Judge

Appellant Larry Williams appeals the determination of the Arkansas Board of Review dismissing his appeal from a finding of overpayment of funds due to his untimely filing of an appeal. We reverse and remand.

A determination of non-fraud overpayment was made by the Department of Workforce Services on August 22, 2011. Williams did not file his notice of appeal until November 4, 2011. He was afforded the opportunity to be heard on his contention that the late filing resulted from circumstances beyond his control.¹ Williams stated at his hearing that his appeal was untimely because the determination letter was delivered to his neighbor. Williams testified that he lives in apartment B of a duplex and that although his mailbox is

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



clearly marked “B,” his mail is sometimes placed in his neighbor’s mailbox, which is not marked. He stated that he has asked his neighbor to mark the box, but that the neighbor has not done so. According to Williams, his neighbor is retired and travels out of town a lot. The determination letter was placed in Williams’s neighbor’s mailbox while the neighbor was out of town, so Williams did not receive the letter until early November when his neighbor returned. Williams filed his appeal on November 4, 2011.

Under Ark. Code Ann. § 11-10-524(a)(1),² a party may appeal the agency’s determination by filing a written notice of appeal with the appeal tribunal or at any office of the Arkansas Employment Security Department within twenty days after the date the notice was mailed. However, if it is determined by an appeal tribunal or the Board of Review that the appeal is not perfected within the twenty-day period as a result of circumstances beyond the appellant’s control, the appeal may be considered as having been filed timely.³

The Arkansas Appeal Tribunal found that Williams’s late filing was not due to circumstances beyond his control because he had not made all reasonable efforts to resolve his mail issues. The Board affirmed:

While the claimant testified that his neighbor refused to take action by marking his mailbox, the claimant’s testimony shows that he realized there was a problem receiving his mail consistently. Additionally, as the claimant knew that his neighbor would be out of town and that the claimant’s mail was sometimes delivered to the neighbor’s mailbox, the Board finds that the claimant could have made arrangements with his neighbor to check his mail or could have forwarded his mail to an alternate mailing address to ensure that his mail was received. As the claimant knew that there was a

²(Repl. 2012).

³Ark. Code Ann. § 11-10-524(a)(2).



problem receiving his mail and made no other effort to ensure that he received his mail, the Board finds that the claimant's actions caused the late filing of the appeal. Therefore, the decision of the Appeal Tribunal . . . is affirmed on finding that the untimely filing of the appeal was not due to circumstances beyond the claimant's control.

Williams timely appealed.

On appeal from the Board of Review, we do not conduct a de novo review; instead, we review the evidence and all reasonable inferences deductible therefrom in the light most favorable to the Board's findings of fact.⁴ We will affirm the Board's findings if they are supported by substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁵ 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 it could have reasonably reached its decision based upon the evidence before it.⁶

Although Williams knew that his mail was sometimes placed in his neighbor's mailbox, there is no indication that he knew that the neighbor would be out of town during the time the determination letter was mailed, as the Board suggests. There was also no indication that Williams even knew that he would be receiving a letter concerning an overpayment. Additionally, the Board's suggestion that Williams should have asked his neighbor to allow him to check the neighbor's mail is not well founded and has some federal law implications.

⁴*West v. Dir.*, 94 Ark. App. 381, 231 S.W.3d 96 (2006).

⁵*Id.*

⁶*Id.*



Cite as 2013 Ark. App. 192

Substantial evidence does not support the Board's determination. We, therefore, reverse and remand.

Reversed and remanded.

WALMSLEY and GLOVER, JJ., agree.

Larry Williams, pro se appellant.

Phyllis Edwards, Associate General Counsel for Artee Williams, Director, Department of Workforce Services.