

ARKANSAS COURT OF APPEALS

DIVISION II

No. E-13-731

CHARLES HARRIS

APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES

APPELLEE

Opinion Delivered MARCH 12, 2014

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2013-BR-01738]

REMANDED

BILL H. WALMSLEY, Judge

Charles Harris appeals the Arkansas Board of Review's denial of emergency unemployment compensation (EUC) benefits for the week ending December 2, 2012, through March 23, 2013. Harris filed a claim for benefits on March 26, 2013, and requested backdating to the week ending December 2, 2012. The Department of Workforce Services denied backdating upon finding that Harris had not shown good cause for his delay in filing. Harris appealed to the Appeal Tribunal, which affirmed the denial, and the Board of Review denied his application for appeal. Harris contends that he demonstrated good cause for his failure to file a timely claim. We remand.

Harris testified before the Appeal Tribunal that he filed his initial claim for regular unemployment benefits on August 16, 2012. He stopped receiving benefits in December, but he continued to file weekly claims. Harris said that he received nonpayment notices every week, which said "benefits cannot be paid for the week ending [12/08/12] because you have

been paid the maximum benefits to which you were entitled.” Harris testified that he was not aware that more benefits were available and that he believed the statement in the notices that he had received the maximum amount of benefits. He filed continued claims for sixteen weeks but received no notification that further action could entitle him to additional benefits. In March 2013, a Department representative from Harris’s local office called him to see if he was still unemployed. Harris was asked to come to the local office, where he was informed that he was eligible for EUC benefits and could request backdating. Harris testified that he had consulted the Department handbook, and it did not mention the existence of different types of benefit programs, such as EUC, or any action required to activate the next level of benefits.

An insured worker shall be eligible to receive benefits with respect to any week only if the Director of the Department of Workforce Services finds that he or she has made a claim for benefits with respect to such week in accordance with such regulations as the director may prescribe. Ark. Code Ann. § 11-10-507(1). Ark. Admin. Code 208.00.2-14(b)(F) requires that continued claims be filed “not later than the seventh day following the last day of the calendar week for which benefits are claimed.” If it is determined by the Department that a delay in the filing of any claim was due to good cause, it may be considered to have been filed on a date no earlier than fourteen days prior to the date the claim was received. Ark. Admin. Code 208.00.2-14(b)(G). However, “the Director at his discretion may waive the restrictions in this Paragraph (G) if he finds that extraordinary circumstances exist and equity and justice require such waiver.” *Id.*

Here, the Appeal Tribunal found that Harris had not shown good cause for the delay in filing his claim for EUC benefits because he could have contacted the Department earlier to inquire as to his options once his regular benefits were exhausted. The Tribunal found that Harris had not shown by a preponderance of the evidence that the Department had any obligation to contact him once his regular benefits were exhausted.

The Board denied Harris's application for appeal pursuant to Arkansas Code Annotated section 11-10-525(f); thus, the decision of the Appeal Tribunal is deemed to be the decision of the Board. We conclude that the current findings of the Board do not adequately support its decision, and we are unable to review it at this time. Harris testified that despite filing continued claims for regular unemployment benefits that were exhausted, he was not notified of the availability of EUC benefits and that the Department's handbook provided no information about these benefits. The Board's decision does not provide us with the Department's regulation or procedure concerning the manner by which claimants are made aware of EUC benefits and their potential eligibility. When an administrative agency fails to make a finding on a pertinent issue, we do not decide the question in the first instance but instead remand for a ruling. *Johnson v. Dir., Dep't of Workforce Servs.*, 2013 Ark. App. 74. We remand to the Board for it to provide further findings on the Department's obligation to notify claimants of EUC eligibility and on whether the lack of any notice to Harris amounted to good cause for his delay.

Remanded.

GRUBER, J., agrees.

GLOVER, J., concurs.

DAVID M. GLOVER, Judge, concurring. I concur because, in his appeal to the Board

of Review, Harris requested that the Board remand his case to the Tribunal for the reason he had additional evidence to present. Documents he submitted to the Board included one of the nonpayment notices he described in his testimony and a printout from the Department's website regarding EUC benefits. This document states that individuals who meet the eligibility criteria for EUC benefits will be mailed notices concerning their eligibility. Furthermore, under the "how to file" section, the website states that claimants will be notified how to file for EUC benefits as they become eligible.

It is within the Board's discretion to direct the taking of additional evidence that was not before the Tribunal. Ark. Code Ann. § 11-10-525(c). Here, however, the Board denied Harris's application for appeal pursuant to Arkansas Code Annotated section 11-10-525(f). Harris submitted evidence to the Board of the Department's own policy in opposition to the Tribunal's findings regarding the Department's obligations.

If the Board decides to take additional evidence regarding the Department's regulation or procedure concerning the manner by which claimants are made aware of EUC benefits and their potential eligibility, the "how to file" section of the Department's website should be addressed. If the Board determines not to take additional evidence, it should explain why it may ignore the Department's own policies and procedures posted on its website.

Charles Harris, pro se appellant.

Phyllis Edwards, Associate General Counsel, for appellee.