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ARKANSAS COURT OF APPEALS

DIVISION III
No. E-18-171

DANNY BUGG

APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES, AND CITY
OF HOT SPRINGS

APPELLEES

Opinion Delivered February 27, 2019

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2018-BR-00453]

REMANDED

PHILLIP T. WHITEAKER, Judge

Appellant Danny Bugg sought unemployment benefits. His application for benefits was denied. Bugg has now appealed to this court, arguing several issues for reversal.¹ Because

¹Before filing his brief in this case, Bugg, who is acting pro se, sought permission from this court to file a nonconforming brief. Bugg asserted that this court's rules for filing appellate briefs are "daunting" and that while he believed his brief complied with our rules, he moved for leave to file a nonconforming brief "to cover any minor disparities which might appear." Our court granted his motion.

Upon submission of his brief, however, we have determined that Bugg's abstract is flagrantly deficient and does not comply with Arkansas Supreme Court Rule 4-2(a)(5). Rule 4-2(a)(5)(A) provides that "[a]ll material information recorded in a transcript . . . must be abstracted," and Rule 4-2(a)(5)(B) requires the abstract to be "an impartial condensation, without comment or emphasis, of the transcript." The transcript of the hearing before the Appeal Tribunal ("the Tribunal") consists of 52 pages, but Bugg's abstract is only five pages long. It omits numerous pages of Bugg's own testimony, and it largely fails to comport with the "first person" format required by the rule.

the Board of Review (“the Board”) failed to render a ruling on one of the key issues raised in Bugg’s appeal, however, we must remand to the Board at this time to make specific findings.

Bugg was employed by the City of Hot Springs (“the City”) as the City’s Animal Control Services (ACS) supervisor. Bugg began his employment in 1999. In 2012, the City placed ACS under the supervision of the Hot Springs Police Department. In 2016, David Frasher became the new city manager. Sometime thereafter, Bugg became concerned with the manner in which ACS was being managed. He expressed his concerns to the chief of police, Jason Stachey. Chief Stachey and Bugg were unable to resolve these concerns to Bugg’s satisfaction. In response, Bugg sent an email to Chief Stachey and Assistant Chief Chris Chapmond, dated September 8, 2017, writing in pertinent part as follows:

After much thought and reflection I find that my first duty to myself is to be honest. . . . Looking at my calendar, it appears Friday, January 5th, of 2018 would be as prime a day to make my exit from the City of Hot Springs. This is NOT my retirement, quite frankly I feel there is much more I can do in this field of work. I simply am unable to continue in a format where the likelihood of this department stepping into operational failure appears to be the path we will embark upon beginning next year. . . . This date is tentative, however [it] seems the most logical time to move forward.

In an email dated September 12, 2017, Chief Stachey informed Bugg that he would “accept [the email] as your official letter of intent to retire.” Bugg responded the next day,

Given our decision to grant Bugg’s motion to file a nonconforming brief, we do not order rebriefing at this juncture. We caution Bugg, however, that pro se litigants in Arkansas are held to the same standards as licensed attorneys. *Crutchfield v. Tyson Foods, Inc.*, 2017 Ark. App. 121, at 8, 514 S.W.3d 499, 504 (citing *Lucas v. Jones*, 2012 Ark. 365, 423 S.W.3d 580); *Elder v. Mark Ford & Assocs.*, 103 Ark. App. 302, 288 S.W.3d 702 (2008)). Similar or other deficiencies will not be overlooked in any future briefs Bugg may file with this court.

protesting that his September 8, 2017 email had not been an expression of his intent to retire. From that point on, Bugg continued to communicate with Chief Stachey, City Manager Frasher, the mayor of Hot Springs, and the City's board of directors. In his communications, Bugg continued to dispute that his September 8, 2017 email had been intended as an expression of his intent to retire. In these communications, Bugg also suggested that the City had not followed proper authority regarding an employee's retirement process. Specifically, Bugg questioned whether Chief Stachey had the legal authority to interpret Bugg's intent in the September 8 email and asserted that only the board of directors had the "supreme executive authority" to interpret an employee's intent with respect to the termination of his or her employment. Bugg was eventually relieved of his duties in December 2017, but the City continued to pay Bugg until January 5, 2018, the date Bugg cited in his original email to Chief Stachey.

Bugg thereafter sought unemployment benefits. The Department of Workforce Services ("the Department") denied his application, finding that he quit his job because he was "dissatisfied with changes that had been made. An evaluation of the facts shows [Bugg] left [his] work voluntarily and without good cause connected with the work." The Department thus concluded that Bugg was disqualified from receiving benefits pursuant to Arkansas Code Annotated section 11-10-513(a)(1) (Repl. 2012).

Bugg timely appealed to the Tribunal, asserting in an accompanying memorandum that (1) he had not intended to retire; (2) the chief of police lacked the authority to interpret his intent; and (3) therefore, his unemployment was not voluntary within the meaning of

section 11-10-513. The Tribunal held a telephone hearing and considered testimony from Bugg and Chief Stachey. Based on the evidence presented at the hearing, the Tribunal concluded that Bugg voluntarily quit his job without good cause.

Bugg timely appealed the Tribunal's decision to the Board and again submitted a legal memorandum on the issues of his intent and Chief Stachey's authority to interpret his intent. The Board affirmed the Tribunal's decision, finding that Bugg's email indicated that his last day of work would be January 5, 2018, and his employer reasonably interpreted and accepted the email as "an end to the employment relationship." The Board thus concluded that Bugg had not shown that he "quit for reasons that would impel the average, able-bodied worker to quit under similar circumstances." The Board did not, however, address Bugg's arguments concerning his employer's authority to take the actions that it did. Bugg timely appealed.

Bugg's appeal to this court is based largely on his argument that he was "involuntarily unemployed because officials of [the City] acted without lawful authority."² Bugg consistently raised this argument before both the Tribunal and the Board. We are unable to reach the merits of Bugg's arguments to this court because the argument was not ruled on at the administrative-agency level. "When an administrative agency fails to make a finding on a pertinent issue, [this court does] not decide the question in the first instance but instead [will] remand for a ruling." *McAlister v. Dir.*, 2012 Ark. App. 349, at 2 (remanding because Board failed to rule on claimant's argument that she was subjected to gender discrimination and directing the Board to address and issue a ruling on that claim in its determination of whether

²Bugg also contends that the Board's decision was not supported by substantial evidence.

good cause existed for claimant to leave her job); *see also Saldana v. Dir.*, 2015 Ark. App. 129, at 3 (remanding for findings because the Board did not rule on the claimant's constitutional arguments); *Harris v. Dir.*, 2014 Ark. App. 163, at 3; *Johnson v. Dir.*, 2013 Ark. App. 74; *Bergman v. Dir.*, 2009 Ark. App. 724.

Because the Board failed to rule on Bugg's arguments concerning the City's authority, and those arguments go to the heart of Bugg's contention that he did not quit without good cause, we must remand to the Board for an appropriate ruling on this issue.

Remanded.

GRUBER, C.J., and VAUGHT, J., agree.

Danny Bugg, pro se appellant.

Phyllis A. Edwards, for appellee.