

Cite as 2022 Ark. App. 245

ARKANSAS COURT OF APPEALS

DIVISION IV

No. E-21-450

JERI DESIRAE SMALL

APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES

APPELLEE

Opinion Delivered May 25, 2022

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW

[NO. 2021-BR-01823]

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Jeri Desirae Small appeals the Arkansas Board of Review’s (the Board’s) decision affirming the Appeal Tribunal’s (the Tribunal’s) dismissal of her unemployment claim as untimely. Because there is substantial evidence to support the Board’s decision, we affirm.

On December 15, 2020, the Division of Workforce Services (DWS) issued a notice of agency determination denying Small benefits under Arkansas Code Annotated section 11-10-513(a) (Supp. 2021) because she voluntarily left her last work without good cause. The determination letter stated that she had twenty days to file an appeal.

On December 22, DWS issued a notice of nonfraud overpayment determination under Arkansas Code Annotated section 11-10-532(b)(1) (Supp. 2021) finding that Small was overpaid benefits and was liable for repayment. The determination letter informed Small that she had twenty days to file an appeal.

On January 5, 2021, Small appealed both the December 15 determination and the December 22 determination to the Appeal Tribunal. Her appeal of the December 22 determination was timely, but twenty days from the December 15 determination expired on January 4.

Accordingly, on April 13, the Appeal Tribunal held a timeliness hearing concerning the December 15 determination in accordance with Arkansas Code Annotated section 11-10-524(a)(2) (Supp. 2021), and *Paulino v. Daniels*, 269 Ark. 676, 559 S.W.2d 760 (Ark. App. 1980), to determine whether the untimeliness was due to circumstances beyond her control. At the hearing, Small testified that she did not know that she untimely filed her appeal. She further claimed that she appealed the determinations the day she received them, but she could not recall the dates. The Tribunal hearing officer took the matter under advisement.

On April 20, the Tribunal issued a decision dismissing Small's appeal, finding that it was untimely and that Small had failed to show that the late filing was due to circumstances beyond her control. Small appealed the Tribunal's decision to the Board. On July 13, the Board affirmed the Tribunal's decision. Small brings this appeal from the Board's decision.

In appeals of unemployment-compensation cases, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings. *Term v. Williams*, 2015 Ark. App. 144, 457 S.W.3d 291. The findings of fact made by the Board are conclusive if supported by substantial evidence. *Id.* Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* Even when there is evidence on 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 on the basis of the evidence before it. *Id.* Issues of credibility of witnesses and the weight to be afforded their testimony are matters for the Board to determine. *Id.* Reasons for late filing involve factual issues to be determined by the Board and not this court on appeal. *Id.*

To appeal a DWS determination, a claimant must file a written notice of appeal with the Tribunal within twenty calendar days of the mailing date of the determination. Ark. Code Ann. § 11-10-524(a)(1). If the appeal is not filed within the statutory time period, the appeal may still be considered timely if the late filing was the result of circumstances beyond claimant's control. Ark. Code Ann. § 11-10-524(a)(2).

In this case, Small argues that the Board erred by finding that she untimely appealed the December 15 determination. She points out that she received two determinations—the December 15 determination and the December 22 determination—and she asserts that she filed the appeal within twenty days from the December 22 determination.

Small alternatively argues that the even if she untimely appealed the December 15 determination, the late filing was due to circumstances beyond her control. She asserts that DWS confusingly issued separate determinations for interrelated matters. She points out that the December 15 determination found that she was disqualified for benefits, and the December 22 determination found that she had to repay benefits as a result of the disqualification finding. She thus argues that the late filing was due to DWS's ambiguous procedure and instructions.¹

¹In her reply brief, Small argues that DWS's confusing procedure violates her due-process rights. We cannot address the merits of the argument because Small did not raise a due-process violation below. *See Parker v. Dir.*, 2021 Ark. App. 462, 637 S.W.2d 295.

We find Small's arguments without merit. The December 15 determination specifically informed Small that she had twenty days to appeal the decision denying her benefits, and DWS mailed the December 15 determination separately from the December 22 determination. Further, Small concedes that she did not file the appeal within twenty days of December 15. Small's confusion concerning the determinations does not constitute circumstances beyond her control. See *Price v. Dir.*, 2011 Ark. App. 100. We further point out that DWS has a long-standing procedure for issuing two determinations in these circumstances. See *Hunt v. Dir.*, 57 Ark. App. 152, 942 S.W.2d 873 (1997). Accordingly, we find that substantial evidence supports the Board's decision.

Affirmed.

KLAPPENBACH and BROWN, JJ., agree.

Nobles Law Firm, PLLC, by: *Ethan C. Nobles*, for appellant.

Cynthia L. Uhrynowycz, Associate General Counsel, for appellee.

Moreover, an argument cannot be raised for the first time in a reply brief. *Jordan v. State*, 323 Ark. 628, 917 S.W.2d 164 (1996).