

Cite as 2022 Ark. App. 435

**ARKANSAS COURT OF APPEALS**

DIVISION III

No. E-21-587

JAMES TANKSLEY

APPELLANT

V.

DIRECTOR, DEPARTMENT OF  
WORKFORCE SERVICES

APPELLEE

Opinion Delivered October 26, 2022

APPEAL FROM THE ARKANSAS  
BOARD OF REVIEW

[NO. 2021-BR-02510]

REMANDED TO SUPPLEMENT  
THE RECORD

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**WAYMOND M. BROWN, Judge**

Appellant James Tanksley (Tanksley) appeals from the adverse ruling of the Arkansas Board of Review (Board) affirming the Arkansas Appeal Tribunal’s (Tribunal’s) determination that dismissed Tanksley’s appeal, finding that Tanksley untimely filed his appeal under the law and failed to establish that it was due to circumstances beyond his control in cases No. 2022-AT-01260. We remand to supplement the record.

A brief review of the facts reflects that Tanksley was issued a “Notice of Agency Determination” on March 2, 2021, denying his application for benefits under Ark. Code Ann. § 11-10-519(1) (Supp. 2021) on finding that he willfully made a false statement or misrepresentation of a material fact or willfully failed to disclose a material fact when filing an initial claim for benefits. Tanksley filed an untimely appeal of this determination to the Tribunal. Thus, pursuant to *Paulino v. Daniels*, 269 Ark. 676, 559 S.W. 2d 760 (Ark. Ct. App. 1980), Tanksley was afforded a hearing on June 3, 2021. Thereafter, the Tribunal

dismissed Tanksley's appeal on finding that the untimely filing was not due to circumstances beyond his control in appeal No. 2021-AT-08690. Then, Tanksley appealed to the Board in case No. 2021-BR-02510, and the Board affirmed the Tribunal's decision. Tanksley next appealed to the Arkansas Court of Appeals in case No. 2021-E-587. The court of appeals remanded the case to the Tribunal due to the failure to locate the recording of the June 3 hearing. The remand was docketed as appeal No. 2022-AT- 01260.

According to the record, the June 3 hearing transcript was never located. Thus, a February 16, 2022, rehearing was conducted to supplement the record. Thereafter, the Tribunal again affirmed the Division's determination in appeal No. 2022-AT-01260, and set aside its previous decision in appeal No. 2021-AT-08690. Following a timely appeal, the Board affirmed the Tribunal's decisions. From this determination, Tanksley timely appealed to this court.

However, once more, we are unable to reach the merits of this appeal and must remand to supplement the record. Our record contains a decision from the Board that indicates the wrong decision from the Tribunal, which was previously set aside. Additionally, the Board's findings are not supported by testimony given at the February 16, 2022, rehearing. From what we can gather the Board resubmitted its decision from the June 3 hearing that was never located, and is not within the record before us. The Board stated in its decision that it had "considered the entire record of prior proceedings before the Appeal Tribunal, including the testimony submitted at the hearing." However, the Board's decision is not supported by the record. A proper determination must be made from

evidence within the record. This information is essential to a proper review of the merits of this appeal.<sup>1</sup> Therefore, we cannot reach the merits of Tanksley's claim at this time.

Accordingly, we remand to the Board with specific instructions to settle and supplement the record with a finding supported by evidence within the record, taking into account the February 16 rehearing. The supplemental record is to be returned thirty days of this order.

Remanded to supplement the record.

VAUGHT and MURPHY, JJ., agree.

*James Tanksley*, pro se appellant.

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

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<sup>1</sup>See *Van Venrooij v. Dir.*, 2021 Ark. App. 213; *Spicer v. Dir.*, 2022 Ark. App. 152, at 2.