

Cite as 2023 Ark. App. 153
ARKANSAS COURT OF APPEALS
DIVISION I
No. E-22-85

JEREMY GREGORY

APPELLANT

V.

DIRECTOR, DIVISION OF
WORKFORCE SERVICES

APPELLEE

Opinion Delivered March 15, 2023

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2021-BR-04007]

AFFIRMED IN PART; REMANDED IN
PART

N. MARK KLAPPENBACH, Judge

Jeremy Gregory appeals to this court, challenging the Arkansas Board of Review's decision requiring him to repay \$4,812 in unemployment-compensation benefits. Gregory contends that he should not be required to repay due to financial and personal hardships. We affirm in part and remand in part.

Gregory received \$101 in regular weekly state-unemployment benefits and \$600 in weekly Federal Pandemic Unemployment Compensation ("FPUC") for the weeks ending June 20 to September 5, 2020, for a total of \$4,812. Gregory was initially denied benefits by the agency, but he was awarded benefits by the Appeal Tribunal. The employer appealed, and the Board reversed the Appeal Tribunal, finding Gregory ineligible for benefits. This resulted in the agency issuing a non-fraud overpayment determination, which made Gregory

liable to repay the benefits. Gregory appealed. Ultimately, the Board concluded that Gregory was liable to repay, and this appeal followed.

Board decisions are upheld if they are supported by substantial evidence. *Blanton v. Dir.*, 2019 Ark. App. 205, 575 S.W.3d 186. Substantial evidence is such relevant evidence that reasonable minds might accept as adequate to support a conclusion. *Id.* In appeals of unemployment-compensation cases, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings. *Id.* Even if there is evidence that could support a different decision, our review is limited to whether the Board could have reasonably reached its decision on the evidence before it. *Id.* However, our function on appeal is not merely to rubber-stamp decisions arising from the Board. *Thomas v. Dir.*, 2019 Ark. App. 468, 587 S.W.3d 612.

For purposes of overpayment of state-unemployment benefits, the repayment may be waived "if the director finds that the overpayment was received as a direct result of an error by the Division of Workforce Services and that its recovery would be against equity and good conscience." Ark. Code Ann. § 11-10-532(b)(2)(A) (Supp. 2021). This means that there is a two-step process in reviewing repayment under state-law principles.

In the present case, the Board found that the overpayment of benefits was a result of a final disqualifying Board determination, not due to agency error. This finding ended the inquiry as to repayment of state-related unemployment benefits, so the Board did not address whether repayment would be against equity and good conscience. We hold that there is

substantial evidence to support the Board’s findings and affirm the decision requiring Gregory to repay state-unemployment benefits.

However, the Board also found that Gregory “may not have been at fault in causing the overpayment.” FPUC repayment may be waived if the State determines that the payment of the FPUC was without fault on the part of the individual and that such repayment would be contrary to equity and good conscience. 15 U.S.C. § 9023(f)(2). The Board failed to mention or make findings on the FPUC-waiver analysis. If adequate findings of fact are not made on the issue presented, we remand to the Board for it to provide findings of fact and conclusions of law upon which to perform proper appellate review. *Pillow v. Dir.*, 2022 Ark. App. 341. We therefore remand for the Board to make findings of fact and conclusions of law regarding whether repayment of the weekly \$600 in FPUC benefits would be contrary to equity and good conscience. *See Jewell v. Dir.* 2023 Ark. App. 109, __ SW.3d __.

Affirmed in part; remanded in part.

WOOD and HIXSON, JJ., agree.

Jeremy Gregory, pro se appellant.

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