

Cite as 2023 Ark. App. 259  
**ARKANSAS COURT OF APPEALS**  
DIVISION IV  
No. E-22-148

REBEKAH BURNETTE

APPELLANT

V.

DIRECTOR, DEPARTMENT OF  
WORKFORCE SERVICES

APPELLEE

Opinion Delivered May 3, 2023

APPEAL FROM THE ARKANSAS  
BOARD OF REVIEW

[NO. 2021-BR-04137]

REVERSED AND REMANDED

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**STEPHANIE POTTER BARRETT, Judge**

Rebekah Burnette (“Burnette”) appeals the decision of the Board of Review (“Board”) affirming the notice of non-fraud overpayment determination issued by the Division of Workforce Services (“Division”) under Ark. Code Ann. § 11-10-532(b) (Supp. 2021) holding Burnette liable to repay \$12,496. The issue before us is whether the requirement that Burnette repay the overpayment should be waived because (1) the overpayment was caused as a direct result of the Division’s error; and (2) requiring repayment by Burnette would be against the principles of equity and good conscience. We find that the Board’s decision that the overpayment was not a direct result of the Division’s error was not supported by substantial evidence. Accordingly, we reverse and remand for further proceedings.

On appeal of an unemployment-compensation case, we affirm the Board’s decision when it is supported by substantial evidence. *Jones v. Dir.*, 2019 Ark. App. 341, at 3, 581

S.W.3d 517, 518. Substantial evidence is what reasonable minds might accept as adequate to support a conclusion. *Id.* “[W]e review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board’s findings.” *Id.* However, our function on appeal is not to merely ratify whatever decision is made by the Board. *Id.* Therefore, “[w]e will reverse the Board’s decision when it is not supported by substantial evidence.” *Id.*

The Division issued a notice of non-fraud overpayment determination to Burnette on January 28, 2021, finding Burnette liable to repay \$12,496 in benefits pursuant to Ark. Code Ann. § 11-10-532(b). Burnette filed an untimely appeal of this determination to the Appeal Tribunal (“Tribunal”) and was afforded a hearing with the Tribunal pursuant to *Paulino v. Daniels*, 269 Ark. 676, 599 S.W.2d 760 (1980), on June 11, 2021. The Tribunal found that Burnette’s untimely appeal was due to circumstances beyond her control, and a hearing to address the underlying issue was scheduled for June 30, 2021. However, Burnette did not appear at the hearing, and the Tribunal affirmed the determination. Burnette timely requested a reopening of the case, and the Tribunal conducted a reopening hearing on August 3, 2021. The Tribunal accepted the request to reopen on finding that Burnette had good cause for failing to appear at the previously scheduled hearing. The Tribunal then conducted a hearing to address the underlying issue on August 24, 2021, and affirmed the determination. Burnette timely appealed to the Board, and the Board affirmed the Tribunal’s decision.

Initially, the Division issued a notice of agency determination granting Burnette benefits under Ark. Code Ann. § 11-10-513(a) (Supp. 2021) on finding that Burnette voluntarily left last work without good cause connected with the work but made reasonable efforts to preserve her employment prior to leaving pursuant to Ark. Code Ann. § 11-10-513(b). Burnette then received benefits for the weeks ending April 4 through July 18, 2020, totaling \$12,496. Once these benefits were exhausted, Burnette filed a claim for additional emergency unemployment compensation benefits on September 14, 2020, and both Burnette and the employer submitted statements to the Division regarding Burnette's separation from work. Following these statements, the Division issued a redetermination on January 25, 2021, denying Burnette benefits under Ark. Code Ann. § 11-10-513(a) on finding that Burnette voluntarily left last work without making reasonable efforts to preserve her employment. However, the statements provided by Burnette were consistent with the statements that she made initially. No new or additional information was given and Burnette was not accused of making a false statement in her initial application. Burnette appealed this determination to the Tribunal, and the determination was affirmed. Burnette then appealed to the Board, where the determination was affirmed.

“If the Director finds that any person has received any amount as benefit under this chapter to which he was not entitled by reason other than fraud, willful misrepresentation, or willful nondisclosure of facts, the person is liable to repay the amount to the Unemployment Compensation Fund.” Ark. Code Ann. § 11-10-532(b)(1). However, repayment may be waived if the overpayment was caused as a direct result of the Division's

error, and it would be against the principles of equity and good conscience to require repayment. *Carman v. Dir.*, 2023 Ark. App. 51, at 7, 660 S.W.3d 852, 857. Principles of equity and good conscience, such as whether claimant has the ability to repay, need not be addressed if the overpayment was not a direct result of error by the Division. *Id.*

In *Carman*, we held there was substantial evidence that the overpayment was not caused as a direct result of the Division's error when the record showed that the claimant later revealed to the Division that he was not available for work during the time period for which he had already received benefits. *Id.* Here, the Board found that the overpayment was not received as a result of the Division's error because the Division received additional information after Burnette had filed her claim that showed she did not make reasonable efforts to preserve her job prior to quitting. However, unlike *Carman*, where the record contained specific evidence to support the Board's decision, the record here contains no support as to what additional evidence the Division received that resulted in the overpayment. Instead, the Board simply came to the conclusion that the overpayment was not caused by Division error. Our review of the pleadings and transcript show no new information regarding the reasons for departure from work nor Burnette's efforts to preserve her job. Therefore, the Division's decision to initially award benefits was made by its own error. Therefore, it was an error to fail to address whether requiring repayment by Burnette would be against the principles of equity and good conscience. Accordingly, we reverse and remand for further proceedings.

Reversed and remanded.

BROWN and KLAPPENBACH, JJ., agree.

*Rebekah Burnette*, pro se appellant.

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