

Cite as 2023 Ark. App. 280
ARKANSAS COURT OF APPEALS

DIVISION III
No. E-22-209

LESLIE SWAFFORD

APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES

APPELLEE

Opinion Delivered May 10, 2023

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW

[NO. 2021-BR-03247]

REMANDED TO SETTLE AND
SUPPLEMENT THE RECORD

WAYMOND M. BROWN, Judge

Appellant, Leslie Swafford (Swafford), appeals an adverse ruling of the Board of Review (Board) affirming an Appeal Tribunal (Tribunal) finding that he is required to repay \$15,743 in unemployment benefits. Due to deficiencies in the record, we remand to settle and supplement the record.

In this unbriefed unemployment case. Swafford was issued a notice of non-fraud overpayment determination on May 14, 2021, finding that he had been overpaid benefits pursuant to Ark. Code Ann. § 11-10-532(b) (Supp. 2021). In response, Swafford filed a timely appeal of this determination to the Tribunal, which conducted a hearing on June 28, 2021. Swafford timely appealed the Tribunal's decision to the Board of Review ("Board"). The Board, in appeal No. 2021-BR-03247, affirmed the Tribunal's decision finding:

The Board finds that this non-fraud overpayment was not caused by Division of Workforce Services error. The claimant filed an initial claim for benefits on April 16, 2020. She indicated she had been laid off due to a lack of work. The claimant received \$15,743.00 in benefits between the week ending April 25, 2020, and the week ending November 7, 2020. The Division issued a determination on April 8, 2021, that found the claimant had voluntarily ended his last employment without good cause connected with the work. The claimant's appeal of the separation determination was dismissed as untimely filed in Appeal Tribunal Appeal No. 2021-AT-11816. The dismissal was affirmed on appeal to the Board of Review in Board Appeal No. 2021-BR-03246. The claimant was overpaid as a result of listing a reason for separation the Division determined to be incorrect. As the overpayment was not the direct result of error by the Division, the claimant is not entitled to an equity and good conscience review.

The Board finds that the decision of the Appeal Tribunal, Appeal No. 2021-AT-11817, which affirmed the Division determination issued on May 18, 2021, under Ark. Code Ann. § 11-10-532(b) holding the claimant liable to repay \$15,743.00 to the fund is affirmed.

Although the Board's findings of fact are correct, we do not reach the merits of this appeal and instead order rebriefing due to deficiencies within the record. From our review, the record includes at least forty pages of documentation regarding a claimant who is not a party to this appeal. Although it does not appear that such documentation was relied on to reach a determination, these documents were referenced during the Tribunal's hearing. Thus, to eliminate any room for error, we remand to settle and supplement the record.

A correct record is essential to a proper review of the Board's determination that the benefits at issue need to be repaid.¹ In the event of a material omission or misstatement, we may sua sponte direct the record to be settled.² This case is remanded to the Board to settle

¹See *Van Venrooij v. Dir.*, 2021 Ark. App. 213.

²*Abbott v. Dir.*, 2015 Ark. App. 221.

and supplement the record to remedy any deficiencies. The supplemental record shall be returned within thirty days of this order.

Remanded to settle and supplement the record.

KLAPPENBACH and BARRETT, JJ., agree.

Leslie Swafford, pro se appellant.

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