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ARKANSAS COURT OF APPEALS

DIVISION III

No. E-22-290

CASSANDRA WHITE

APPELLANT

V.

DIRECTOR, DIVISION OF
WORKFORCE SERVICES

APPELLEE

Opinion Delivered May 31, 2023

APPEAL FROM THE ARKANSAS BOARD
OF REVIEW
[NO. 21-BR-5168]

REMANDED FOR FURTHER
FINDINGS

KENNETH S. HIXSON, Judge

Appellant Cassandra White appeals from an order issued by the Arkansas Board of Review (the Board) on May 19, 2022, requiring appellant to repay \$751 in overpaid unemployment benefits in favor of appellee, Division of Workforce Services (DWS). We remand for further findings.

Appellant was previously employed by Virco, Inc. After she filed for benefits, she received regular state benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits pursuant to the CARES Act, codified at 15 U.S.C.A. § 9023 (Westlaw) in the combined total amount of \$751. On July 7, 2021, DWS mailed a notice of agency determination to appellant finding that appellant had not been eligible for benefits for the week beginning February 14, 2021, through February 20, 2021, because she was not able to

perform suitable work “[d]ue to a personal illness.” Appellant ultimately failed to timely appeal from that determination.

After DWS had determined that appellant was ineligible for the benefits she received for that week, DWS mailed a notice of non-fraud overpayment determination on August 12, 2021, stating that appellant was required to repay \$751 in the overpaid benefits she received pursuant to Ark. Code Ann. section 11-10-532(b) (Supp. 2021). According to the “Review Claim Transactions” form provided in this matter, appellant received \$451 in regular state benefits and \$300 in FPUC benefits for the week it was determined that she was ineligible.

Appellant timely filed her appeal from the non-fraud overpayment determination to the Arkansas Appeal Tribunal (Tribunal), and she was afforded a telephone hearing on September 23, 2021, in which she argued she should not have to repay the benefits she received. The Tribunal mailed a written decision on October 12, 2021, affirming DWS’s determination that appellant must repay the overpaid benefits. The Tribunal stated the following in pertinent part:

The claimant received \$751 in benefits for the week of February 20, 2021. The Division determined the claimant was not entitled to the benefits as a result of not being able and available for work due to personal illness. The underlying determination remains in effect. Therefore, the claimant is liable to repay the \$751 in benefits.

Appellant appealed the Tribunal’s decision to the Board. On May 19, 2022, the Board affirmed and adopted the Tribunal’s decision as amended to correct a date. The Board added the following findings:

The Division determined that the claimant was not able and available for suitable work for the week ending February 20, 2021, and the overpayment resulted. The claimant appealed the determination regarding her availability to the Tribunal, and the Tribunal issued a decision in Appeal No. 2021-AT-20236 on October 12, 2021, which affirmed the Division's determination. There is not a record of an appeal of that issue to the Board, and as such the determination is still in effect. Therefore, the claimant is liable to repay \$751 to the fund.

This appeal followed.

On appeal of an unemployment-compensation case, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings. *Jones v. Dir.*, 2019 Ark. App. 341, 581 S.W.3d 516. The Board's findings of fact are conclusive if supported by substantial evidence. *Id.* Substantial evidence is evidence a reasonable mind might accept as adequate to support a conclusion. *Id.* Appellate review is limited to determining whether the Board could reasonably reach its decision based on the evidence before it, even if there is evidence on which the Board might have reached a different decision. *Higgins v. Dir.*, 2016 Ark. App. 449, 503 S.W.3d 833. The credibility of witnesses and the weight to be accorded their testimony are matters to be resolved by the Board. *Id.*

Regarding the \$451 appellant received in regular state benefits, we must look to Arkansas Code Annotated section 11-10-532(b)(2), which states the following:

(b)(1) If the director finds that a person has received an amount as benefits under this chapter to which he or she was not entitled by reasons other than fraud, willful misrepresentation, or willful nondisclosure of facts, the person is liable to repay the amount to the Unemployment Compensation Fund.

(2)(A) In lieu of requiring the repayment, the director may recover the amount by deduction of any future benefits payable to the person under this chapter *unless* 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.*

(B) As used in subdivision (b)(2)(A) of this section, “direct result of an error by the Division of Workforce Services” does not include overpayments established under an appeal reversal as a result of the successful appeal of a denial of benefits.

Ark. Code Ann. § 11-10-532 (Supp. 2021) (emphasis added). In other words, before repayment can be waived, our legislature requires (1) that the overpayment must be the direct result of an error by the Division *and* (2) that requiring the claimant to repay would be against equity and good conscience. Although we note that the statute has recently been amended to revert to a previous version of the statute and states that DWS “may recover the amount [of any overpayment] by deduction of any future benefits payable to the person under this chapter unless the director finds that the overpayment was received without fault on the part of the recipient and that its recovery would be against equity and good conscience,” this amendment was not effective until March 6, 2023. Act 197 of 2023. As such, we must follow the statute in effect from October 1, 2019, through March 5, 2023, that required the overpayment of state benefits to first be received as a direct result of an error by DWS to waive repayment.

However, we must look to federal law as to whether the FPUC benefits must be repaid. *Rush v. Dir.*, 2023 Ark. App. 276, ___ S.W.3d ___; *Carman v. Dir.*, 2023 Ark. App. 51, 660 S.W.3d 852. The following requirements regarding FPUC funds are set out in 15 U.S.C.A. § 9023(f)(2):

(2) Repayment

In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(A) *the payment of such Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation was without fault on the part of any such individual*; and

(B) such repayment would be contrary to equity and good conscience.

(Emphasis added.) Notably, there is no requirement for a finding that the overpayment was a result of DWS error, but the statute does require a determination that the payment was without fault on the part of the worker before waiving repayment.

Here, the Board failed to make any specific findings regarding either the state- or federal-waiver analysis or to specifically determine who was at fault. Whether sufficient findings of fact have been made is a threshold question in an appeal from an administrative board. *Pillow v. Dir.*, 2022 Ark. App. 341. 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. *Id.* A conclusory statement by the Board that does not detail or analyze the facts upon which it is based is not sufficient. *Id.* Therefore, we must remand for further findings as to whether appellant is required to repay the \$751 in total benefits she received after applying the appropriate state- and federal-waiver analysis.

Remanded for further findings.

MURPHY and BROWN, JJ., agree.

Cassandra White, pro se appellant.

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