

Cite as 2023 Ark. App. 378
ARKANSAS COURT OF APPEALS

DIVISION I
No. E-22-131

LINDA NANCE

APPELLANT

V.

DIRECTOR, DIVISION OF WORKFORCE
SERVICES

APPELLEE

Opinion Delivered September 13, 2023

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW

[NO. 2021-BR-4247]

AFFIRMED IN PART; REMANDED IN
PART

BART F. VIRDEN, Judge

This case returns to us after a remand to settle and supplement the record. *Nance v. Dir.*, 2023 Ark. App. 186. In this matter, appellant, Linda Nance, appeals an adverse ruling of the Board of Review (Board) affirming an Appeal Tribunal (Tribunal) finding that she is required to repay \$10,119 in unemployment benefits. We affirm in part and remand in part.

I. *Background and Procedural History*

The record indicates that Nance received regular state unemployment benefits totaling \$1593 and extended state unemployment benefits totaling \$4626 between July 25, 2020, and January 30, 2021. In addition, Nance received Federal Pandemic Unemployment Compensation (“FPUC”) totaling \$2100 and Lost Wage Assistance (“LWA”) totaling \$1800

during that time. The record also contains a notice of agency determination dated June 21, 2021, that disqualified Nance for benefits beginning July 2, 2020, finding that she quit her previous employment on that date due to her voluntary retirement. A “Notice of Nonfraud Overpayment Determination” dated July 29, 2021, found that Nance was required to repay \$10,119 for the entirety of benefits received the weeks of July 25, 2020, through January 30, 2021. The record indicates that her underlying disqualification was appealed and affirmed by the Board in appeal No. 2021-BR-4246, with no further appeal taken in that matter. Therefore, we address only the issue of repayment.

II. *Standard of Review*

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 as a result of the evidence presented. *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; *Wilson v. Dir.*, 2017 Ark. App. 171, 517 S.W.3d 427.

III. Analysis

This court's recent decision in *Carman v. Director*, 2023 Ark. App. 51, 660 S.W.3d 852, confirmed that, 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." *Carman*, 2023 Ark. App. 51, at 7, 660 S.W.3d at 857 (quoting Ark. Code Ann. § 11-10-532(b)(2)(A) (Supp. 2021)). *Carman* also holds that 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. *Id.* at 8, 660 S.W.3d at 857 (citing 15 U.S.C. § 9023(f)(2)).

In the present case, the Board found that the overpayment of benefits was a result of Nance's failure to correctly report the nature of her employment separation as of July 2, 2020, not due to agency error. We hold that there is substantial evidence to support the Board's findings. Because Nance fails to satisfy the first prong of her state unemployment-waiver analysis, we affirm the decision requiring Nance to repay \$6219 in regular and extended state unemployment benefits she received from July 25, 2020, through January 30, 2021.

However, the Board failed to make any findings regarding the two prongs of the FPUC-waiver analysis outlined in *Carman*. If adequate findings of fact are not made on the issue presented, we remand to the Board for findings of fact and conclusions of law upon which to perform proper appellate review. *Pillow v. Dir.*, 2022 Ark. App. 341, at 4. We

therefore remand to the Board for findings of fact and conclusions of law, utilizing the FPUC-waiver-analysis prongs, regarding repayment of the \$2100 in FPUC benefits Nance received from July 25, 2020, through January 30, 2021. We likewise remand for appropriate findings regarding the \$1800 in LWA Nance received during that time, in accordance with *Rush v. Director*, 2023 Ark. App. 276, 668 S.W.3d 520.

Affirmed in part; remanded in part.

KLAPPENBACH and WOOD, JJ., agree.

Linda Nance, pro se appellant.

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