

Cite as 2023 Ark. App. 597
ARKANSAS COURT OF APPEALS

DIVISION III
No. E-22-531

HOLLY HANCOCK

APPELLANT

V.

DIRECTOR, DIVISION OF WORKFORCE
SERVICES

APPELLEE

Opinion Delivered December 13, 2023

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW

[NO. 2022-BR-01083]

REMANDED

MIKE MURPHY, Judge

In this unbriefed employment-security-division case, Holly Hancock appeals to this court, challenging the Arkansas Board of Review’s decision requiring her to repay unemployment-compensation benefits she previously received. This is a companion case to *Hancock v. Director*, 2023 Ark. App. 588, and *Hancock v. Director*, 2023 Ark. App. 598, also handed down today. We remand for further findings.

In the underlying opinion by the Board of Review, the Board found that Hancock was liable to repay \$2149 in benefits. The record suggests that some of the benefits to be repaid are regular state unemployment, but some of the benefits are also funds provided through the federal CARES Act.

In *Carman v. Director*, 2023 Ark. App. 51, 660 S.W.3d 852, we explained 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 (emphasis added) (quoting Ark. Code Ann. § 11-10-532(b)(2)(A) (Supp. 2021)). However, the rule for Federal Pandemic Unemployment Compensation is different. In *Carman* we explained that the federal law governing recovery of an overpayment of FPUC benefits requires that

(2) Repayment

In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation . . . to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic 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 . . . was without fault on the part of any such individual; and

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

15 U.S.C. § 9023(f)(2).

2023 Ark. App. 51, at 7-8, 660 S.W.3d at 857.

Notably, there is no requirement for a finding that the overpayment was a result of Division error, but the statute does require a determination that the payment was without fault on the part of the worker.

Here, the Board found that the overpayment was not received as a direct result of an error by the Division and thus that a review of equity and good conscience was not warranted. While this would constitute findings sufficient to review whether the waiver of

repayment of the overpayment of state unemployment benefits is supported by substantial evidence under Arkansas law, we cannot readily determine from this record what amount of the benefits at issue originated from Federal Pandemic Unemployment Compensation funds and what amount constitutes regular state unemployment. This is problematic because if any of the amounts concern FPUC benefits, the findings are insufficient to review the issue of waiver of repayment of the overpayment under federal law.

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. *Patterson v. Dir.*, 2014 Ark. App. 113, at 5. Accordingly, we remand for the Board to make findings concerning where the overpayment funds originated and, if necessary, make findings of fact and conclusions of law regarding whether the FPUC payments were made without the fault of the claimant and whether repayment would be contrary to equity and good conscience.

Remanded.

BARRETT and BROWN, JJ., agree.

Holly Hancock, pro se appellant.

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