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ARKANSAS COURT OF APPEALS

DIVISION III

No. E-22-557

Opinion Delivered January 24, 2024

KATHERINE JAMES

APPELLANT

APPEAL FROM THE ARKANSAS BOARD
OF REVIEW
[NO. 2022-BR-01107]

V.

DIRECTOR, DIVISION OF
WORKFORCE SERVICES

APPELLEE

REVERSED AND REMANDED

STEPHANIE POTTER BARRETT, Judge

The Arkansas Board of Review (Board) affirmed the denial of unemployment insurance benefits to the appellant, Katherine James, on the basis that she received benefits to which she was not entitled for reasons other than making a false statement or misrepresentation of a material fact knowing it to be false or knowingly failing to disclose a material fact requiring her to repay the overpaid benefits. James brings this appeal challenging the Board's decision. We must reverse and remand the Board's decision on the merits because the Board failed to make findings of fact upon which it relied in reaching its conclusion. *Ferren v. Dir.*, 59 Ark. App. 213, 956 S.W.2d 198.

The claimant, Katherine James, is a licensed practical and licensed vocational nurse and was employed with Catholic Health Initiatives in Hot Springs during the relevant time periods of this appeal. At that time, James was working a reduced number of hours because of low census in the hospital. On March 8, 2022, the Division sent James a notice of

nonfraud overpayment determination alleging that she had misrepresented her employment earnings and had been overpaid \$1,600 for the dates ending April 18, May 2, May 16, May 30, June 13, and June 20, 2021. She was alleged to have received overpayments of benefits between \$10 and \$811 on the claims filed. James contended that some overpayments had been recovered by the Division and other alleged overpayments were incorrect. James filed a timely notice of appeal of this decision to the Arkansas Appeal Tribunal.

In her hearing before the Tribunal, James attempted to explain why the overpayment calculations of the Division were incorrect regarding some of the overpayment allegations. James believed that the Division merely made a weekly wage determination based on her biweekly pay stub by dividing the wages paid by one-half rather than on the hours worked each week as she reported. The hearing officer prohibited her from showing how the Division was incorrect in its calculations by reviewing each of the pay stubs that were in question. Ark. Code. Ann. § 11-10-526(a)(1) provides in part: “[A]ny hearing or appeal before the tribunals shall be conducted in such manner as to ascertain the substantial rights of the parties.” In other words, a party must be given a fair hearing. When James began to go over each individual weekly pay stub in question to show the incorrect calculations of the department, the hearing officer stated, “I’m not going to go through every check stub. I just want you to go ahead and give me your testimony on why do you feel like you should not have to repay this overpayment?” The weekly claims for benefits documents were omitted from this record to show exactly what claims were made by James and the records that supported the revised income determination.

Our standard of review in unemployment-insurance cases is well settled. We do not conduct de novo reviews on appeals from the Board. *Keener v. Dir.*, 2021 Ark. App. 88, 618 S.W.3d 446. Instead, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings of fact. *Id.* at 1, 618 S.W.3d at 448. We accept the Board's findings of fact as conclusive if supported by substantial evidence, which is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Even when there is evidence on which the Board might have reached a different decision, our scope of judicial review is limited to a determination of whether the Board could have reasonably reached the decision rendered on the basis of the evidence presented. *Id.* at 1-2, 618 S.W.3d at 448. We defer credibility calls to the Board as the finder of fact as well as the weight to be accorded to testimony presented to the Board as the finder of fact. While our role in these cases is limited, we are not here to merely ratify the decision of the Board. Instead, our role is to ensure that the standard of review has been met. *Id.* at 2, 618 S.W.3d at 448.

The Board's findings of facts consisted of a statement that it "had considered the entire record of the prior proceedings before the Appeal Tribunal, including the testimony submitted at the hearing, [and] the Board concludes that the decision made by the Appeal Tribunal is correct as to the findings of fact and conclusions of law, and that the appeal tribunal decision is hereby adopted as the decision of the Board of Review." Although labeled a finding of fact, the quoted statement was a conclusion of law. *See Cagle Fabricating & Steel, Inc. v. Patterson*, 309 Ark. 365, 830 S.W.2d 857 (1992). A claimant is entitled to

know the factual basis upon which his claim is denied, *Jones v. Tyson Foods, Inc.*, 26 Ark. App. 51, 759 S.W.2d 578 (1988), and cases lacking this degree of specificity will be remanded for a decision based on a specific finding. *Belcher v. Holiday Inn*, 49 Ark. App. 64, 896 S.W.2d 440 (1995).

We note that the Board adopted the Appeal Tribunal's decision as its own. If the Appeal Tribunal had made findings of fact and conclusions of law sufficient to allow meaningful review, this would have been acceptable. See, e.g., *Cowan v. Dir.*, 56 Ark. App. 17, 936 S.W.2d 766 (1997) (where the Board adopted the Appeal Tribunal's findings of fact and conclusions of law, we reviewed those findings and conclusions under the applicable standard of review); cf. *Lowe v. Car Care Mktg.*, 53 Ark. App. 100, 102, 919 S.W.2d 520, 521. While the tribunal may specifically adopt the findings of fact made by the hearing officer, it is necessary under such circumstances that the hearing officer have made "sufficient findings." A finding of fact sufficient to permit meaningful review is a "simple straightforward statement of what happened." *Lowe*, 53 Ark. App. at 102, 919 S.W.2d at 521. A conclusory statement that does not detail or analyze the facts upon which it is based is not sufficient. *Cagle Fabricating & Steel, Inc.*, 309 Ark. 365, 830 S.W.2d 857.

The Appeal Tribunal also did not make sufficient findings of fact to permit review. In effect, the Tribunal merely recited the weeks that the Division claimed as overpayments without a discussion of the facts and determined there was an overpayment of \$1,600 that must be repaid to the fund. Because we are unable to determine the facts upon which the

Board relied in reaching its conclusion, we reverse and remand for the Board to make specific findings of fact.

Reversed and remanded.

KLAPPENBACH and MURPHY, JJ., agree.

Katherine James, pro se appellant.

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