

Cite as 2024 Ark. App. 85  
**ARKANSAS COURT OF APPEALS**  
DIVISION I  
No. E-22-600

JEAN WIMBLEY

APPELLANT

V.

DIRECTOR, DIVISION OF  
WORKFORCE SERVICES

APPELLEE

Opinion Delivered February 7, 2024

APPEAL FROM THE ARKANSAS  
BOARD OF REVIEW

[NO. 2022-BR-01344]

AFFIRMED IN PART; REMANDED IN  
PART

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**WENDY SCHOLTENS WOOD, Judge**

Jean Wimbley appeals an adverse ruling of the Board of Review (Board) affirming an Appeal Tribunal (Tribunal) finding that she is liable to repay \$23,096 in overpaid unemployment benefits. We affirm in part and remand in part.

On February 1, 2022, the Arkansas Division of Workforce Services (DWS) issued a notice of agency determination to Wimbley finding that on March 20, 2020, she left her work voluntarily and without good cause connected with the work. The record reflects that Wimbley filed an untimely appeal of her disqualification to the Tribunal, and the Tribunal affirmed the notice and dismissed her case. Wimbley appealed the Tribunal's decision, and the Board affirmed the dismissal of her appeal, which we affirm without opinion today in case No. E-22-599.

On March 9, 2022, DWS issued a notice of nonfraud overpayment determination finding that Wimbley was required to repay \$23,096 in unemployment benefits that she received between the weeks ending March 21, 2020, and January 23, 2021. Wimbley timely appealed this determination to the Tribunal, and the Tribunal affirmed it. Wimbley appealed to the Board, which affirmed the Tribunal, finding that the overpayment of benefits was not due to agency error. More specifically, the Board found that the overpayment was a result of initial information from Wimbley that she was filing for benefits after being reduced from full-time work and that the agency paid benefits on the basis of what she had reported. The Board further found that the notice of agency determination in E-22-599, disqualifying her from benefits, remained in effect. Wimbley brings this appeal of the Board's decision finding her liable to repay the overpayment of benefits totaling \$23,096.

Board decisions are upheld if they are supported by substantial evidence. *Blanton v. Dir.*, 2019 Ark. App. 205, at 1, 575 S.W.3d 186, 187. Substantial evidence is such relevant evidence that reasonable minds might accept as adequate to support a conclusion. *Id.*, 575 S.W.3d at 188. 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.* at 1-2, 575 S.W.3d at 188. 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 on the basis of the evidence presented. *Id.* at 2, 575 S.W.3d at 188. However, our function on appeal is not merely to rubber-stamp decisions arising from the Board. *Id.* at 2, 575 S.W.3d at 188.

This court's decision in *Carman v. Director* confirmed that, for purposes of the 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 v. Dir.*, 2023 Ark. App. 51, at 7, 660 S.W.3d, 852, 857 (quoting Ark. Code Ann. § 11-10-532(b)(2)(A) (Supp. 2021)). *Carman* also holds that the repayment of Federal Pandemic Unemployment Compensation ("FPUC") benefits may be waived if the state determines that the payment of the FPUC benefits was without fault on the part of the worker and that 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)). Our decision in *Rush v. Director*, 2023 Ark. App. 276, at 6, 668 S.W.3d 520, 524, holds that the same overpayment-waiver factors to consider regarding FPUC benefits also apply to lost wage assistance (LWA) benefits.

The record indicates that Wimbley received regular state unemployment benefits totaling \$4,304 and extended state unemployment benefits totaling \$5,592, for a total of \$9,896, between the weeks ending March 21, 2020, and January 23, 2021. Because the Board found that the overpayment of state unemployment benefits was not due to agency error, substantial evidence supports its decision requiring her to repay the \$9,896 in regular and extended state unemployment benefits that she received between the weeks ending March 21, 2020, and January 23, 2021.

In addition, Wimbley received FPUC benefits totaling \$11,400 and LWA totaling \$1,800 during that time. However, the Board failed to make any findings regarding the

federal-benefit-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 federal-benefit-waiver analysis, regarding repayment of the \$11,400 in FPUC benefits and the \$1,800 in LWA that Wimbley received during the relevant time period.

Affirmed in part; remanded in part.

VIRDEN and GLADWIN, JJ., agree.

*Jean Wimbley*, pro se appellant.

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