

Cite as 2024 Ark. App. 125
ARKANSAS COURT OF APPEALS

DIVISION II
No. E-22-625

MYTEAR BERKHALTER

APPELLANT

V.

DIRECTOR, DIVISION OF
WORKFORCE SERVICES;
AND ARKANSAS BUILDING
SERVICES, LLC

APPELLEES

Opinion Delivered February 21, 2024

APPEAL FROM THE
ARKANSAS BOARD OF REVIEW
[NO. 2022-BR-01225]

REMANDED TO SETTLE AND
SUPPLEMENT THE RECORD

STEPHANIE POTTER BARRETT, Judge

Mytear Berkhalter appeals the Board of Review's (Board's) dismissal of her unemployment-benefits appeal on the basis that her untimely appeal to the Board was not due to circumstances beyond her control. Because our record does not contain a transcript of the October 19, 2022, hearing conducted by the Board on the timeliness issue, we remand to settle and supplement the record to include a transcript of that hearing.

On March 11, 2021, the Division of Workforce Services issued a determination denying Berkhalter benefits on the finding that she had willfully made a false statement or misrepresentation of a material fact while filing an initial claim. Berkhalter filed an untimely appeal of that determination to the Appeal Tribunal, which, pursuant to *Paulino v. Daniels*, 269 Ark. 676, 559 S.W.2d 760 (Ark. App. 1980), held a hearing on April 11, 2022, to

determine if the untimely filing of the appeal was due to circumstances beyond Berkhalter's control.¹ The Appeal Tribunal issued a decision finding that the late filing was not due to circumstances beyond Berkhalter's control and dismissed the appeal. Berkhalter then filed an untimely appeal to the Board from the Appeal Tribunal decision.

On October 19, 2022, the Board held a second *Paulino* hearing to determine if Berkhalter's untimely filing of her appeal to the Board was due to circumstances beyond her control. As a result of that hearing, the Board concluded Berkhalter had not shown that the late filing of her appeal was due to circumstances beyond her control. However, because our record does not contain a transcript of the October 19 *Paulino* hearing, we cannot reach the merits of Berkhalter's claim at this time. We remand this case to the Board to settle and supplement the record. See *Robinson v. Dir.*, 2023 Ark. App. 585.

Remanded to settle and supplement the record.

GLADWIN and GRUBER, JJ., agree.

Mytear Berkhalter, pro se appellant.

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

¹According to the statements of the hearing officer, the *Paulino* hearing before the Appeal Tribunal involved two cases—2022-AT-02416 (the subject of this appeal) and 2022-AT-02417.