

Cite as 2024 Ark. App. 139  
**ARKANSAS COURT OF APPEALS**

DIVISION I  
No. E-23-132

MARISOL CANCHOLA  
APPELLANT

V.

DIRECTOR, DIVISION OF  
WORKFORCE SERVICES  
APPELLEE

Opinion Delivered February 28, 2024

APPEAL FROM THE ARKANSAS  
BOARD OF REVIEW  
[NO. 2022-BR-1995]

AFFIRMED

**N. MARK KLAPPENBACH, Judge**

Appellant, Marisol Canchola, appeals the decision of the Board of Review that dismissed her appeal as untimely, but the thrust of her argument focuses on the underlying decision by the Appeal Tribunal<sup>1</sup> that she must repay overpaid unemployment benefits. We affirm the dismissal of appellant’s appeal and, like the Board of Review, do not reach the merits of her arguments concerning repayment of benefits.

In appeals of unemployment-compensation cases, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board’s findings. *Parker v. Dir.*, 2021 Ark. App. 462, 637 S.W.3d 295. The findings of fact made by the Board are conclusive if supported by substantial evidence. *Id.* Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.*

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<sup>1</sup>2022-AT-01433.

Even when there is evidence on which the Board might have reached a different decision, the scope of judicial review is limited to a determination of whether the Board could have reasonably reached its decision on the evidence before it. *Id.* Issues of credibility of witnesses and the weight to be afforded their testimony are matters for the Board to determine. *Id.* Reasons for late filing involve factual issues to be determined by the Board and not this court on appeal. *Id.*

An appeal from the Appeal Tribunal to the Board must be by written notice filed within twenty calendar days of the mailing date of the determination. Ark. Code Ann. §§ 11-10-525(b) (Supp. 2023); 11-10-524(a)(1) (Repl. 2012). If the appeal is not filed within the statutory period, the appeal may still be considered timely if the late filing was the result of circumstances beyond appellant's control. Ark. Code Ann. § 11-10-524(a)(2).

In *Paulino v. Daniels*, 269 Ark. 676, 599 S.W.2d 760 (1980), the supreme court held that due process requires that the appellant be afforded a hearing to determine whether the late filing was due to circumstances beyond the claimant's control. This is commonly referred to as a *Paulino* hearing.

In this case, the Appeal Tribunal's decision regarding repayment of benefits was mailed to appellant on September 8, 2022, so appellant had until September 28 to file her appeal. The appeal was not filed until September 29, one day too late. At the *Paulino* hearing, appellant could not recall whether she had received the September 8 letter. Appellant's attorney testified that the law office received the letter on September 26, she prepared an appeal letter, and she faxed appellant's appeal on September 26, but "we never

got a confirmation.” The attorney faxed the appeal again on September 29, which was received.

The Board determined that the untimely filing was not due to circumstances beyond appellant’s control. Appellant had allowed her attorney to act as her agent, and her attorney did not timely transmit appellant’s appeal. The Board faulted the attorney for not ensuring the first fax went through or contacting the agency to determine how to ensure a timely filing. The Board dismissed the appeal as untimely, and for that reason, it did not reach the underlying decision that required appellant to repay unemployment benefits. This appeal followed.

Appellant focuses on the underlying Appeal Tribunal decision, but like the Board, we lack jurisdiction to consider the merits of that decision due to the untimely filing of the appeal to the Board. The general rule is that a client is bound by the acts of his attorney within the scope of the latter’s authority, including the attorney’s negligent failure to file proper pleadings. *See Springdale Mem’l Hosp. v. Dir.*, 34 Ark. App. 266, 809 S.W.2d 828 (1991). We hold that there is substantial evidence to support the Board’s determination that the untimely filing of appellant’s appeal was not due to circumstances beyond her control.

Affirmed.

HIXSON and BROWN, JJ., agree.

*Lion Legal Services*, by: *Danielle Hasty*, for appellant.

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

