

Cite as 2024 Ark. App. 160
ARKANSAS COURT OF APPEALS
DIVISION IV
No. E-22-673

ANNA VANHORN

APPELLANT

V.

DIRECTOR, DIVISION OF
WORKFORCE SERVICES

APPELLEE

Opinion Delivered March 6, 2024

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2022-BR-01469]

AFFIRMED IN PART; REMANDED IN
PART

RAYMOND R. ABRAMSON, Judge

Anna VanHorn appeals an adverse ruling of the Board of Review (Board) affirming an Appeal Tribunal (Tribunal) finding that she is liable to repay \$23,134 in overpaid unemployment-compensation benefits. We affirm in part and remand in part.

The record indicates that VanHorn received \$451 in weekly state unemployment benefits for the weeks ending November 7, 2020, through June 26, 2021, totaling \$15,334. In addition, VanHorn received \$300 in weekly Federal Pandemic Unemployment Compensation (“FPUC”) from January 2, 2021, through June 26, 2021, for a total of \$7800 in FPUC benefits.

The decision disqualifying VanHorn from unemployment benefits was ultimately upheld by the Board in case No. 2022-BR-01468 because VanHorn was found, after a

*Paulino*¹ hearing, to have filed an untimely appeal of a decision by the Division of Workforce Services (Division) to the Tribunal. We affirm the Board's decision affirming the dismissal of her appeal without opinion today in *VanHorn v. Director*, (E-22-670). In this separate appeal, we address only the issue of repayment.

On September 3, 2021, the Division issued a notice of nonfraud overpayment to VanHorn following the Division's determination that she had been disqualified from receiving benefits. VanHorn timely filed an appeal of the overpayment determination to the Tribunal. A hearing was held on the overpayment issue on September 29, after which the Tribunal found that the overpayment was not due to Division error and that VanHorn was, therefore, liable for repayment. VanHorn appealed the Tribunal's decision to the Board. The Board issued a decision in case number 2021-BR-04663 that remanded the case to the Tribunal for another hearing.

The hearing was conducted before the Tribunal on May 25, 2022, by telephone in case number 2022-AT-03646, after which the Tribunal affirmed the Division's determination. VanHorn appealed the Tribunal's decision to the Board. After reviewing the record, the Board affirmed and adopted the decision of the Tribunal in case number 2022-BR-01469, which is now before us as VanHorn appeals the overpayment determination.

Board decisions are upheld if they are supported by substantial evidence. *Blanton v. Dir.*, 2019 Ark. App. 205, 575 S.W.3d 186. Substantial evidence is such relevant evidence

¹*Paulino v. Daniels*, 269 Ark. 676, 559 S.W.2d 760 (Ark. Ct. App. 1980).

that reasonable minds might accept as adequate to support a conclusion. *Id.* 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.* 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.* However, our function on appeal is not merely to rubber-stamp decisions arising from the Board. *Thomas v. Dir.*, 2019 Ark. App. 468, 587 S.W.3d 612; *Wilson v. Dir.*, 2017 Ark. App. 171, 517 S.W.3d 427.

This court's recent decision in *Carman v. Director*, 2023 Ark. App. 51, 660 S.W.3d 852, confirmed 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 (quoting Ark. Code. Ann. § 11-10-532(b)(2)(A) (Supp. 2021)). *Carman* also holds that FPUC repayment may be waived if the State determines that the payment of the FPUC was without fault on the part of the individual and that such 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)).

In the present case, the Board affirmed and adopted the decision of the Tribunal, which found that the overpayment of benefits was a result of a final disqualifying Board determination and not due to an error by the Division. As stated above, to avoid repayment of state unemployment benefits, the overpayment must have been caused as a direct result

of the Division's error, and it must be against principles of equity and good conscience to require repayment. *See* Ark. Code Ann. § 11-10-532(b)(2).

Because VanHorn failed to satisfy the first prong of her state unemployment-waiver analysis that overpayment was received as a result of an error by the Division, we affirm the Board's decision requiring VanHorn to repay \$15,334 in state unemployment benefits.

However, VanHorn also received FPUC benefits. For the repayment of federal benefits to be waived, the Division must find that the federal payments were made without fault on the part of the claimant and that repayment would be contrary to equity and good conscience. *See* 15 U.S.C. § 9023(f)(2). Here, neither the Tribunal nor the Board performed the required federal-waiver analysis to determine whether the \$7,800 in FPUC benefits must be repaid, and no findings were made with regard to that analysis. Whether sufficient findings of fact have been made is a threshold question in an appeal from an administrative board. *Id.* 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. *Id.* Therefore, we must remand for further findings as to, first, whether VanHorn was at fault and, second, whether repayment would be contrary to equity and good conscience before requiring her to repay the \$7,800 in FPUC benefits.

In sum, we affirm the decision requiring VanHorn to repay the \$15,334 in state benefits and remand for further findings regarding whether VanHorn is required to repay the \$7,800 in FPUC benefits for the reasons set forth above.

Affirmed in part; remanded in part.

VIRDEN and THYER, JJ., agree.

Anna VanHorn, pro se appellant.

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