

Cite as 2024 Ark. App. 226
ARKANSAS COURT OF APPEALS

DIVISION III
No. E-23-58

JERRY BAGGETT

APPELLANT

V.

DIRECTOR, DIVISION OF
WORKFORCE SERVICES

APPELLEE

Opinion Delivered April 3, 2024

APPEAL FROM THE ARKANSAS BOARD
OF REVIEW
[NO. 2022-BR-02020]

REMANDED FOR FURTHER
FINDINGS

STEPHANIE POTTER BARRETT, Judge

Jerry Baggett appeals the Board of Review’s (“Board’s”) decision that he is liable to repay \$1793 in overpaid unemployment benefits. We remand this case to the Board for further findings.

On June 24, 2022, the Division of Workforce Services (“DWS”) issued a determination that Baggett had misreported his earnings for the weeks ending May 2, 2020, through May 23, 2020, resulting in an overpayment of \$1793 in unemployment benefits. Baggett filed an untimely appeal of that decision to the Appeal Tribunal (“Tribunal”), which was dismissed in appeal No. 2022-AT-06192 when the Tribunal found that the untimely filing was not due to circumstances beyond Baggett’s control; that decision was affirmed by the Board in appeal No. 2022-BR-02019, and it remains in effect.

On August 11, 2022, DWS issued a “Notice of Non-Fraud Overpayment Determination” finding that Baggett was liable to repay the \$1793 in benefits. Baggett timely appealed the non-fraud overpayment determination to the Tribunal, which affirmed the DWS determination. The Board affirmed the Tribunal’s decision that Baggett was liable to repay the benefits because the overpayment was not the result of an error by DWS, and an equity-and-good-conscience review was not warranted.

A review of the record indicates that Baggett received both regular state unemployment benefits and federal pandemic unemployment compensation (“FPUC”) during the weeks in question. In *Hancock v. Director*, 2023 Ark. App. 597, this court explained, citing *Carman v. Director*, 2023 Ark. App. 51, 660 S.W.3d 852, that the requirements for waiving the repayment of overpaid state and FPUC unemployment benefits differ—for state benefits, repayment may be waived if it is found that the overpayment was a direct result of an error by DWS, and recovery would be against equity and good conscience, but waiver of repayment of FPUC benefits requires a determination that the overpayment was without fault on the part of the worker, and such repayment would be contrary to equity and good conscience.

Here, as in *Hancock*, the Board found that the overpayment was not received as a direct result of an error by DWS, and thus a review of equity and good conscience was not necessary. While that finding would normally constitute sufficient findings to review whether there was substantial evidence to support repayment of state unemployment benefits, we are unable to discern from the information contained in the “Review Claims

Transactions” document in the record which overpayment amounts are regular state unemployment benefits and which amounts are FPUC benefits. As explained in *Hancock*, this is problematic because if any of the overpayment amounts are for FPUC benefits, the Board’s findings are insufficient to review the issue of waiver of repayment under federal law.

If adequate findings of fact are not made on the issue presented, this court remands to the Board for additional findings of fact and conclusions of law upon which proper appellate review can be performed. We remand this case to the Board to make findings concerning the origin of the overpayments and, if necessary, make findings of fact and conclusions of law regarding whether the FPUC payments were made without the fault of Baggett and whether repayment would be contrary to equity and good conscience.

Remanded for further findings.

MURPHY and BROWN, JJ., agree.

Jerry Baggett, pro se appellant.

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