

Cite as 2024 Ark. App. 335
ARKANSAS COURT OF APPEALS
DIVISION I
No. E-23-188

JENNIFER M. BARNES

APPELLANT

V.

DIRECTOR, DIVISION OF
WORKFORCE SERVICES

APPELLEE

Opinion Delivered May 22, 2024

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2023-BR-00013]

REMANDED TO SETTLE THE
RECORD

WENDY SCHOLTENS WOOD, Judge

This is an unbriefed employment-security-division case with two companion cases, *Barnes v. Director*, E-23-186, and *Barnes v. Director*, 2024 Ark. App. 327 (E-23-187), which are also being handed down today. In the present case, Jennifer Barnes appeals the decision of the Arkansas Board of Review (Board) (2023-BR-00013) dismissing her claim because her appeal from the decision of the Appeal Tribunal (Tribunal) was untimely. Because the Board decision does not reference the correct claim at issue in this case, we remand to settle the record.

On December 1, 2021, the Division of Workforce Services (Division) issued a notice of nonfraud overpayment determination requiring Barnes to repay \$1,701, stating that she received unemployment benefits to which she was not entitled. Barnes untimely appealed the decision to the Tribunal, which conducted a hearing pursuant to *Paulino v. Daniels*, 269

Ark. 676, 599 S.W.2d 760 (Ark. App. 1980), to determine whether the untimely filing of the appeal was due to circumstances beyond Barnes's control. The Tribunal found that Barnes's untimely filing was not a result of circumstances beyond her control and dismissed her appeal. As a result of the Tribunal's dismissal, the underlying determination requiring Barnes to repay \$1,701 in unemployment benefits remained in place.

Barnes then untimely appealed the Tribunal decision to the Board. On March 30, 2023, the Board conducted another *Paulino* hearing to determine whether the untimely filing of the appeal to the Board was due to circumstances beyond Barnes's control. On April 3, the Board issued a decision finding that Barnes's untimely filing was not a result of circumstances beyond her control. The Board dismissed Barnes's appeal and found that the Tribunal's decision remained in effect. Barnes appealed the Board's decision.

While on appeal to this court, on June 16, the Division moved to remand because the March hearing was not in the record, and another hearing was necessary to correct the error. On July 19, this court entered an order granting the Division's motion to remand to correct the record.

The Board conducted another *Paulino* hearing on August 10. On August 11, the Board issued a decision dismissing Barnes's appeal as untimely. However, the August 11 decision references a notice of nonfraud overpayment determination that required Barnes

to repay \$7,549 in unemployment benefits.¹ The decision does not reference the determination finding Barnes liable to repay \$1,701, which is the relevant claim in this case.

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. *Dawson v. Dir.*, 2023 Ark. App. 374, at 3. Given the error discussed herein, we remand this case to the Board to settle the record to reflect the correct claim at issue.

Remanded to settle the record.

ABRAMSON and GRUBER, JJ., agree.

Jennifer M. Barnes, pro se appellant.

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

¹The Board's decision requiring Barnes to repay \$7,549 in unemployment benefits is the subject of *Barnes v. Director*, E-23-186.