

Cite as 2024 Ark. App. 384
ARKANSAS COURT OF APPEALS

DIVISION II
No. E-23-250

TANYA TURNEY

APPELLANT

V.

DIRECTOR, DIVISION OF
WORKPLACE SERVICES

APPELLEE

Opinion Delivered June 5, 2024

APPEAL FROM THE ARKANSAS BOARD
OF REVIEW

[NO. 2023-BR-00537]

REVERSED AND REMANDED

STEPHANIE POTTER BARRETT, Judge

Turney appeals the Board of Review’s determination that she owes both state and federal unemployment benefits for failure to provide accurate unemployment information in her application for benefits on April 20, 2021. We reverse and remand.

The Division of Workforce Services issued a notice of non-fraud overpayment determination to Turney on August 3, 2021, finding her liable to repay overpaid benefits under Ark. Code Ann. § 11-10-532(b) ((Supp. 2023) in the amount of \$416 for the week ending June 5, 2021, on finding that she was an employee of an educational institution. Ark. Code Ann. § 11-10-509(b)(1) (Repl. 2012). Because Turney was an employee of an educational institution, a monetary redetermination reduced her weekly and maximum benefits amount. The agency found Turney was overpaid \$416 for the week of June 5, 2021. Turney filed a timely appeal of this determination to the Appeal Tribunal (Tribunal) on

August 6, which conducted a hearing on September 13. Turney did not appear at the hearing to testify. The Tribunal affirmed the Division's determination.

On October 5, 2021, Turney timely appealed the Tribunal's decision to the Board of Review (Board). The Board remanded the case to the Tribunal with instructions to conduct a reopening hearing. The Tribunal conducted a reopening hearing on May 20, 2022, and found that Turney had shown good cause for failing to appear at the hearing on September 13, 2021, and ordered a hearing on the underlying issue, which was held on March 10, 2023. The Tribunal found that Turney did not show an error by the division and that equity and good conscience did not require a waiver of repayment of the \$416. Since federal benefits were paid to her, the Board made findings of fact that the overpayment was Turney's fault, and a determination of the second prong was unnecessary.

On March 24, 2023, Turney filed a timely appeal to the Board. The Board concluded that Turney was not entitled to waiver under either the state requirements or under the federal guidelines in light of the facts of the case.

The first issue to be resolved should have been whether Turney made a false statement or misrepresentation of a material fact to make her ineligible for benefits for the week ending on June 5, 2021. The Board made a conclusory finding that the record does not show the overpayment was due to error by the division, but that is a legal conclusion without any factual findings as to what caused the overpayment. *Pillow v. Dir.*, 2022 Ark. App. 341. When 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. *Wimbley v. Dir.*, 2024 Ark. App. 85, 683 S.W.3d 634.

The notice of nonfraud determination states the initial application for benefits on which the nonfraud determination was made was April 20, 2021. It found Turney had made false statements or misrepresentations in her application. However, the record does not include the application for unemployment benefits that Turney filed on April 20, 2021, for the week ending June 5, 2021, which is a material omission from the record. In the event of a material omission or misstatement, we may sua sponte direct the record to be settled. *Abbott v. Dir.*, 2015 Ark. App. 221. A correct record is essential to a proper review of the Board's determination that the benefits at issue need to be repaid, and we cannot reach the merits of Turney's non-fraud-overpayment issue at this time. *Williams v. Dir.*, 2024 Ark. App. 157. Therefore, we must remand this case for further findings of fact to (1) determine whether Turney made a false statement or misrepresentation on her claim for benefits, (2) supplement the record to provide the application for unemployment benefits, and (3) make a determination of the amount of overpaid state benefits and the amount of overpaid federal benefits.

Reversed and remanded.

THYER and BROWN, JJ., agree.

Tanya Turney, pro se appellant.

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