

Cite as 2023 Ark. App. 418
ARKANSAS COURT OF APPEALS

DIVISION III
No. E-22-344

CHRISTOPHER HILL

APPELLANT

V.

DIRECTOR, DIVISION OF
WORKFORCE SERVICES

APPELLEE

Opinion Delivered September 27, 2023

APPEAL FROM THE ARKANSAS BOARD
OF REVIEW

[NO. 2021-BR-05266]

AFFIRMED IN PART;
REMANDED IN PART

KENNETH S. HIXSON, Judge

Appellant Christopher Hill appeals from an order issued by the Arkansas Board of Review (the Board) on May 13, 2022, requiring him to repay \$18,279 in overpaid unemployment benefits in favor of appellee, Division of Workforce Services (DWS). We affirm in part and remand for further findings in part for the reasons we previously addressed in *Rush v. Dir.*, 2023 Ark. App. 276, 668 S.W.3d 520, and *Carman v. Dir.*, 2023 Ark. App. 51, 660 S.W.3d 852.

The appellant filed for unemployment benefits and received regular and extended state benefits; Federal Pandemic Unemployment Compensation (FPUC) benefits pursuant to the CARES Act, codified at 15 U.S.C. § 9023; and lost-wage-assistance (LWA) benefits pursuant to the federal Stafford Act and 44 C.F.R. § 206.120 (2021). Subsequently, on September 1, 2021, DWS mailed a notice of agency determination to appellant advising him

that he had been disqualified from unemployment benefits beginning April 27, 2020. The determination explained to the appellant that he had been discharged from his job on April 27, 2020 “because [he was] absent and failed to properly notify the employer. The claimant’s action constitutes misconduct connected with the work.” Hence, the appellant was disqualified from receiving unemployment benefits for this period. Appellant ultimately failed to timely appeal from that determination.

After DWS advised the appellant that he was ineligible for the benefits he received, DWS mailed a notice of nonfraud overpayment determination on October 7, 2021, stating that appellant was required to repay \$18,279 in the overpaid benefits he received pursuant to Arkansas Code Annotated Section 11-10-532(b) (Supp. 2021). According to the “Review Claim Transactions” form provided in this matter, appellant received \$8,679 in regular and extended state benefits; \$7,800 in FPUC benefits; and \$1,800 in LWA benefits, all of which appellant was ordered to repay.

Appellant timely filed his appeal from the repayment determination to the Appeal Tribunal (Tribunal), and he was afforded a telephone hearing on November 2, 2021, in which he argued he should not have to repay the benefits he received. The Tribunal mailed a written decision on November 3, 2021, affirming DWS’s determination that appellant must repay the overpaid benefits.

Appellant timely appealed the Tribunal’s decision to the Board. The Board affirmed the Tribunal’s decision and mailed its written decision on May 13, 2022, in which it made the following findings:

The claimant must meet two elements prescribed by law to not be held liable for repayment once a non-fraudulent overpayment has been established. 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). In this case, the overpayment resulted from a disqualifying determination which is still in effect. While the claimant may not have been at fault in causing the overpayment, it was not caused as a direct result of the Division's error. Principles of equity and good conscience need not be addressed as the claimant must meet both elements to avoid repayment. Therefore, the Tribunal decision finding the claimant liable for repayment is affirmed.

This appeal followed.

On appeal of an unemployment-compensation case, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings. *Jones v. Dir.*, 2019 Ark. App. 341, 581 S.W.3d 516. The Board's findings of fact are conclusive if supported by substantial evidence. *Id.* Substantial evidence is evidence a reasonable mind might accept as adequate to support a conclusion. *Id.* Appellate review is limited to determining whether the Board could reasonably reach its decision based on the evidence before it, even if there is evidence on which the Board might have reached a different decision. *Higgins v. Dir.*, 2016 Ark. App. 449, 503 S.W.3d 833. The credibility of witnesses and the weight to be accorded their testimony are matters to be resolved by the Board. *Id.*

Where the claimant receives both state- and federal-unemployment benefits and the state attempts to recover benefits paid for nonfraud overpayments, the Board must conduct a different waiver analysis for the state-unemployment benefits received and the federal-unemployment benefits received. Under the state and federal law in effect during the

relevant times of this case, the waiver standards were different for state repayments and federal repayments. See *Carman, supra*; *Rush, supra*. For the repayment of state benefits to be waived, the Director must find that the overpayment *was 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) (Supp. 2021). However, for the repayment of federal benefits to be waived, the Director must find that the federal payments were made *without fault on the part of the individual* and that repayment would be contrary to equity and good conscience. See 15 U.S.C.A. § 9023(f)(2).

In the present case, regarding the repayment of nonfraud state-unemployment benefits, the Board applied the standard set forth in section 11-10-532(b)(2) and concluded that the overpayments were not received *as a direct result of an error by DWS*. Substantial evidence supports the Board's findings in this regard. Appellant had been disqualified from benefits after he had been discharged from his job on April 27, 2020, for misconduct. Appellant failed to timely appeal from that determination, and that determination is therefore, still in effect. As such, we must affirm the decision requiring appellant to repay the \$8,679 in state-unemployment benefits because appellant failed to satisfy the first prong of the state-waiver analysis. See *Rush, supra*.

Regarding whether the federal FPUC and LWA benefits must be repaid, the Board did not perform the required federal-waiver analysis. Instead, the Board used the state-waiver standards to determine that appellant was required to repay *both* the state- and federal-unemployment benefits he received, to-wit:

The claimant must meet two elements prescribed by law to not be held liable for repayment once a non-fraudulent overpayment has been established. 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). . . . Therefore, the Tribunal decision finding the claimant liable for *repayment* is affirmed.

This was in error. The repayment referred to the Board's decision was *both* for state-unemployment benefits *and* the federal-unemployment benefits. The Board should have used the federal-waiver standard to determine whether appellant was required to repay the FPUC and LWA benefits. To that end, the Board should have determined whether the payments of FPUC and LWA benefits was without fault on the part of the individual and second whether repayment would be contrary to equity and good conscience. 15 U.S.C.A. § 9023(f)(2). The Board failed to do so.

We would be remiss if we failed to note that in the Board's discussion of the state-waiver analysis, the Board included the statement that “[w]hile the claimant *may not have been at fault* in causing the overpayment, it was not caused as a direct result of the Division's error.” (Emphasis added.) The statement by the Board that the claimant “may not have been at fault” in determining that appellant must repay the state benefits he received under a state-waiver analysis does not address and dispose of the FPUC and LWA repayment waiver standard that the payment was “without fault on the part of the individual.”

Whether sufficient findings of fact have been made is a threshold question in an appeal from an administrative board. *Pillow v. Dir., Div. of Workforce Servs.*, 2022 Ark. App. 341. 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.* A conclusory statement by the Board that does not detail or analyze the facts upon which it is based is not sufficient. *Id.* Therefore, we must remand for further findings as to whether the payment of \$7,800 in FPUC and \$1,800 in LWA benefits was without fault on the part of the appellant and whether repayment would be contrary to equity and good conscience.

Thus, in conclusion, we affirm the decision requiring appellant to repay the \$8,679 in state-unemployment benefits, and we remand for further findings to determine whether the appellant is required to repay the \$7,800 in FPUC benefits and \$1,800 in LWA benefits for reasons set forth herein.

Affirmed in part; remanded in part.

ABRAMSON and VIRDEN, JJ., agree.

Christopher Hill, pro se appellant.

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