

Cite as 2009 Ark. App. 661

ARKANSAS COURT OF APPEALS

DIVISION IV

No. E09-87

JERRY D. MAEZ

APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES

APPELLEE

Opinion Delivered October 7, 2009APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[2007-BR-719]

REVERSED AND REMANDED

DAVID M. GLOVER, Judge

This is an unbriefed, *pro se* appeal from a decision by the Board of Review. The Board dismissed claimant's appeal from a decision of the Arkansas Appeal Tribunal for failure to demonstrate that his untimely filing of the appeal was the result of circumstances beyond his control. We reverse and remand without reaching the merits of this appeal because the Board's decision made no findings of fact, without which we cannot conduct our judicial review.

In *Chandler v. Arkansas Appraisers Licensing & Certification Board*, 92 Ark. App. 423, 424, 214 S.W.3d 861, 862 (2005), we explained:

The Administrative Procedure Act requires that a "final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the

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underlying facts supporting the findings.” Ark. Code Ann. § 25-15-210(b)(2) (Repl. 2002). This court has described a “finding of fact” as:

[A] simple straightforward statement of what happened. A statement of what the Board finds has happened; not a statement that a witness, or witnesses, testified thus and so [W]hen the reader is a reviewing court the statement must contain all specific facts relevant to the contested issue or issues so that the court may determine whether the Board has resolved those issues in conformity with the law.

Here, the Board’s decision described the procedural history of the case, summarized the evidence, and set forth the applicable statutory provisions. However, under the heading, “Findings of Fact and Conclusions of Law,” the Board stated in pertinent part:

Based on the evidence, the Board of Review finds that the claimant’s appeal to the Board of Review was filed in an untimely manner and that the claimant failed to show that the late filing was due to circumstances beyond his control.

There are no findings of fact in the decision. A conclusory statement that does not detail or analyze the facts upon which it is based is not sufficient. *Ferren v. Director*, 59 Ark. App. 213, 956 S.W.2d 198 (1997). When an administrative agency fails to make a finding upon a pertinent issue of fact, the courts do not decide the question in the first instance. *Chandler, supra*. The cause is remanded to the agency so that a finding can be made on that issue. *Id.*

Accordingly, we reverse and remand this case to the Board of Review to make the necessary findings of fact.

Reversed and remanded.

GLADWIN and HENRY, JJ., agree.