

**ARKANSAS COURT OF APPEALS**

DIVISION I

No. E07-156

PATHFINDER INC.,

APPELLANT

V.

ARTEE WILLIAMS, DIRECTOR  
DEPARTMENT OF WORKFORCE  
SERVICES and PEARLIE M. WATSON,  
APPELLEES

Opinion Delivered 4 June 2008

APPEAL FROM THE ARKANSAS  
BOARD OF REVIEW  
[NO. 2007-BR-000848]

AFFIRMED

**D.P. MARSHALL JR., Judge**

The core issue in this unemployment-benefits case is whether an employer got notice of a hearing at which it failed to appear. The Board of Review found that Pathfinder Inc. failed to show good cause for not appearing. The Board therefore refused to reopen the record to allow Pathfinder to present evidence about whether its former employee was entitled to unemployment benefits. We affirm the Board's finding on notice because substantial evidence supports the Board's decision on this disputed issue of fact. *Tate v. Director, Department of Workforce Services*, 100 Ark. App. 394, 395, \_\_\_ S.W.3d \_\_\_, \_\_\_ (2007).

Pearlie Watson received a Department of Workforce Services determination denying her unemployment benefits because her employer, Pathfinder, discharged her for being absent and not properly notifying her supervisor. Pathfinder got a copy of this

determination too. Watson challenged the denial of benefits. The Department granted her a telephone hearing before the Arkansas Appeal Tribunal. The Department's file indicated that it mailed a hearing notice to Watson and Pathfinder.

Pathfinder did not appear at the hearing. Watson did, and testified that she missed work because she had the flu. She also said that she called in and spoke with her supervisor each day about being sick. A fellow Pathfinder employee testified and corroborated Watson's version of events. The Appeal Tribunal reversed the Department's determination and awarded Watson unemployment benefits.

Pathfinder received the Appeal Tribunal's decision and appealed it. Pathfinder claimed that it never received any notice of the first hearing and was therefore unable to participate. The Appeal Tribunal then conducted a second hearing limited to one issue: whether Pathfinder had good cause for failing to appear at the previous hearing and was therefore entitled to have the matter reopened to present evidence. Not getting notice, of course, would be good cause for not appearing. The Appeal Tribunal found that Pathfinder failed to establish good cause for not appearing. The Board affirmed this decision, and Pathfinder now appeals to our court.

We review for substantial evidence. *Tate, supra*. The hearing officer stated that the Department's file reflected that "the Notice of [the first] Telephone Hearing was mailed to both parties on April 16, setting this matter for a hearing on April 26, 2007, at 1:45." The record on appeal contains a copy of this notice. Because the Department

properly addressed, stamped, and mailed the notice, the law presumes that Pathfinder received it. *Swink & Co. v Carroll McEntee & McGinley, Inc.*, 266 Ark. 279, 290, 584 S.W.2d 393, 399 (1979). When Pathfinder denied receipt, however, a question of fact arose. *Ibid.* Pathfinder’s “mere denial that a properly mailed letter was not received is not sufficient, as a matter of law, to rebut the presumption; it simply leaves the question of receipt to the [fact-finder].” 266 Ark. at 290–91, 584 S.W.2d at 399.

The record contains substantial evidence supporting the Board’s resolution of this fact question against the employer. First, Pathfinder’s witness acknowledged receiving the Department’s determination and the original Appeal Tribunal decision—documents mailed before and after the hearing notice. The witness also acknowledged that the Department sent mail to Pathfinder’s correct mailing address. The hearing notice reflected that the Department sent it to the same address as the other documents. Further, Pathfinder presented testimony only from its Director of Compliance, not from the person who actually handled Pathfinder’s mail. On these facts, the Board of Review concluded that “it is as likely that there was an in-house problem with the hearing notice after the employer received it, as is the possibility that the employer did not receive it at all.” We affirm the Board’s answer to the fact-bound question of whether Pathfinder actually got the hearing notice.

Affirmed.

HART AND GLADWIN, JJ., agree.