

**ARKANSAS COURT OF APPEALS**

DIVISION III

No. E12-208

TIFFANY ZIEGLER

APPELLANT

V.

DIRECTOR, DEPARTMENT OF  
WORKFORCE SERVICES

APPELLEE

Opinion Delivered October 24, 2012

APPEAL FROM THE ARKANSAS  
BOARD OF REVIEW  
[2012-BR-00367 EUC]

REMANDED FOR FINDINGS

**RAYMOND R. ABRAMSON, Judge**

Tiffany Ziegler appeals from a decision of the Arkansas Board of Review (Board) finding her liable to repay unemployment benefits she received but to which she was later determined not to be entitled. On appeal, Ms. Ziegler argues that the Board erred in finding that she was liable for the overpayment because she was not discharged for misconduct. We remand for a hearing and for additional findings.

On August 6, 2009, Ms. Ziegler filed a claim for unemployment benefits. In her application, Ms. Ziegler stated that she had been laid off for lack of work. On August 18, 2009, her employer, Dippin Dots, filed a response indicating that Ms. Ziegler had been discharged for absences/tardiness, insubordination, and theft. Ms. Ziegler had received unemployment benefits for over a year when the Department of Workforce Services (Department) discovered a clerical error and issued a notice of agency determination on August 25, 2010, finding that Ms. Ziegler had been discharged for misconduct connected

with the work and stating that she was disqualified from benefits beginning August 6, 2009. Ms. Ziegler did not timely appeal this determination.

On November 14, 2011, the Department issued a Notice of Fraud Overpayment Determination holding Ms. Ziegler liable to repay \$134 in unemployment-insurance benefits based on a finding that Ms. Ziegler had knowingly made a false statement or failed to disclose a material fact, resulting in the receipt of benefits to which she was not entitled. The Department also issued a Notice of Non-Fraud Overpayment Determination on November 30, 2011, holding Ms. Ziegler liable to repay \$8069 in unemployment benefits based on a finding that she was at fault for causing the overpayment and it would not be against equity and good conscience to require payment.<sup>1</sup> Ms. Ziegler timely appealed these notices to the Appeal Tribunal.

At the hearing, Ms. Ziegler argued that there was no overpayment because she had not been discharged for misconduct and attempted to explain why she had not appealed the previous determination. The Appeal Tribunal refused to consider Ms. Ziegler's arguments because the only issue before it at that time was the amount of overpayments assessed by the Department. The hearing officer indicated to Ms. Ziegler that, because she had failed to timely challenge the Department's initial finding of disqualification, he was bound by it and a separate hearing would be necessary to address her arguments. The Appeal Tribunal then

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<sup>1</sup>A Notice of Non-Fraud Overpayment Redetermination was issued on December 6, 2011, again holding Ms. Ziegler liable to repay \$8069 in unemployment benefits based on a finding that she was at fault for causing the overpayment and that it would not be against equity and good conscience to require payment.

issued a ruling upholding the Department's overpayment determinations.

Ms. Ziegler timely appealed the ruling to the Board and requested an opportunity to present evidence regarding her termination. The Board denied her request to provide additional information and upheld the determination of the Appeal Tribunal with respect to the amount of overpayment. The Board, however, also appeared to address the underlying issue of her termination by specifically finding that Ms. Ziegler made a false statement regarding her separation from her work.

On appeal, Ms. Ziegler again argues that she did not receive an overpayment because she had not been fired for misconduct—the merits of which were addressed in the Board's decision despite Ms. Ziegler's failure to timely appeal that issue and despite the lack of an evidentiary hearing on that basis. While Ms. Ziegler attempted to explain her failure to appeal that finding during the hearing before the Appeal Tribunal, she was not allowed to do so. Under the facts before us here, we consider that attempt to be a request for a hearing pursuant to *Paulino v. Daniels*, 269 Ark. 676, 599 S.W.2d 760 (Ark. App. 1980), to establish whether the late filing was the result of circumstances beyond her control. Because the Appeal Tribunal and the Board failed to take evidence on the reasons why Ms. Ziegler failed to timely appeal the initial disqualification, we remand for a hearing to determine (1) whether Ms. Ziegler's failure to appeal from the Department's August 25, 2010 determination that she had been fired for misconduct was the result of circumstances beyond her control and, (2) if so, whether she was fired for misconduct and whether she knowingly made a false statement; and for additional findings with respect thereto.

Remanded for findings.

HOOFFMAN and BROWN, JJ., agree.