

ARKANSAS COURT OF APPEALS

DIVISION IV

No. E12-287

DANIEL HOLLOWAY

APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES

APPELLEE

Opinion Delivered November 7, 2012APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2010-BR-03114]

REVERSED AND REMANDED

RITA W. GRUBER, Judge

In this unbriefed unemployment-benefits case, Daniel Holloway appeals a decision of the Arkansas Board of Review concluding that he is liable to repay the Department of Workforce Services a total of \$900 in unemployment benefits. We reverse and remand this case because the appeal is premature.

On February 12, 2010, the Department issued two determinations: one disqualifying Holloway from receiving benefits pursuant to Ark. Code Ann. § 11-10-519 (Repl. 2012), upon finding that he had committed fraud in connection with filing his claim; and one disqualifying Holloway from receiving benefits pursuant to Ark. Code Ann. § 11-10-514, upon finding that he had been discharged for misconduct. Holloway appealed these determinations to the Appeal Tribunal in case number 2010-AT-02203, and the Tribunal affirmed. Holloway then appealed the Tribunal's decision, and that appeal is still pending before the Board.

On September 16, 2010, the Department issued three more determinations to Holloway: a notice of fraud overpayment determination pursuant to Ark. Code Ann. § 11-10-532(a), finding that Holloway was liable to repay \$337 in benefits that he received and was not entitled to; a notice of nonfraud overpayment determination pursuant to Ark. Code Ann. § 11-10-532(b), finding that he was liable to repay \$97 in benefits that he received and was not entitled to; and a notice of nonfraud overpayment determination pursuant to Ark. Code Ann. § 11-10-532(b), finding that he was liable to repay \$466 in benefits that he received and was not entitled to.

Holloway appealed all three overpayment determinations to the Tribunal, which affirmed. He then appealed to the Board, which found that the Tribunal's decision was correct as to both findings of fact and conclusions of law, and adopted the Tribunal's decision as its own. He then appealed the Board's decision regarding the overpayment determinations to this court. The only three determinations currently before this court are the overpayment determinations issued on September 16, 2010.

The Board, in concluding that Holloway was liable to repay the Department, specifically rested its decision upon the two underlying eligibility determinations issued on February 12, 2010. As noted in the Board's decision, the two eligibility determinations are still pending appeal before the Board. We find that the appeal to this court regarding the overpayment determinations is premature, given that the appeal regarding the underlying eligibility determinations is still pending before the Board. *See, e.g., Brannan v. Everett, Dir. of Labor*, 5 Ark. App. 271, 636 S.W.2d 301 (1982) (holding that a final decision regarding

appellant’s liability for repayment of benefits was premature when the ultimate question of his eligibility had not yet been resolved); and *Thurman v. Everett, Dir. of Labor*, 6 Ark. App. 340, 642 S.W.2d 323 (1982) (reversing and remanding for a new hearing on “the issue of repayment in the event the appeal of the overpayment issue is finally decided in favor of the agency,” despite the fact that appellant neither raised the issue in the hearing nor filed a brief, and recognizing that even as the opinion was being written “the issue may be moot”).

Although both the *Brannan* and *Thurman* decisions were issued under prior versions of the unemployment-benefits statutes, the issue remains the same—that one determination necessarily rests on a prior determination, and somehow, the second determination made it through the appellate process quicker than the initial determination upon which it rests. Accordingly, we reverse and remand for a new hearing on the overpayment determinations once the eligibility determinations in case number 2010-AT-02203 have become final for appellate purposes.

Reversed and remanded.

GLADWIN and GLOVER, JJ., agree.

No briefs.