

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Submitted on Briefs January 5, 2023

<b>FILED</b> 04/06/2023 Clerk of the Appellate Courts
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**IBRAHEEM SABAH v. TENNESSEE DEPARTMENT OF LABOR AND  
WORKFORCE DEVELOPMENT ET AL.**

**Appeal from the Chancery Court for Sumner County  
No. 2021-CV-155 Louis W. Oliver, Judge**

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**No. M2022-00526-COA-R3-CV**

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This case involves the denial of a claim for pandemic unemployment assistance and the subsequent administrative proceedings before the Tennessee Department of Labor and Workforce Development. The applicant failed to appear for his appeals hearing despite being notified of the hearing and the procedures required to participate in the hearing. The applicant's request to reopen his case was denied because he failed to show good cause for his failure to attend. The applicant petitioned for judicial review in the chancery court. After finding substantial and material evidence to support the denial of benefits, the chancery court affirmed the decision of the Commissioner's Designee. We affirm the chancery court's decision.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

ANDY D. BENNETT, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and JEFFREY USMAN, J., joined.

Ibraheem Sabah, Dearborn Heights, Michigan, pro se.

Jonathan Skrmetti, Attorney General and Reporter, and Jordan Keith Crews, Senior Assistant Attorney General, for the appellee, Tennessee Department of Labor and Workforce Development.

## OPINION

Ibraheem Sabah filed a claim for Pandemic Unemployment Assistance (“PUA”)<sup>1</sup> with the Tennessee Department of Labor and Workforce Development (“the Department”). By letter dated January 11, 2021, the Department rendered a “disqualifying determination” stating, in part: “We have completed a review and investigation of your claim for Pandemic Unemployment Assistance referenced above. We have determined that you did not provide sufficient proof of employment at the time the Pandemic began or were to start work but could not because of the Pandemic.” The disqualification was effective from April 19, 2020 to March 13, 2021. The letter further described Mr. Sabah’s right to appeal the disqualifying determination.

Mr. Sabah appealed the disqualification to the Appeals Tribunal on January 15, 2021. As the “Reason for Appeal,” Mr. Sabah stated: “I believe the reason I am being disqualified is for the phone call I have missed, my sincere apologies but for one reason or the other the phone call was showing as spam.” The Department acknowledged receipt of the appeal by letter mailed to Mr. Sabah on February 16, 2021. The letter explained that an “appeals hearing will be scheduled in the near future” and further explained that he would “receive a Notice of Hearing” that would provide “the hearing date, time, and participation instructions.” In boldface print, the letter stated, “It is important that all parties participate and follow instructions as explained in the Notice of Hearing.”

The Department mailed a “NOTICE OF TELEPHONE HEARING PANDEMIC UNEMPLOYMENT CLAIM APPEAL” to Mr. Sabah on March 16, 2021. Among other things, the Notice stated:

**DATE AND TIME OF YOUR HEARING:**

**Date:** Friday 3/26/2021

**Time:** 2:00 PM Central Time

**LOCATION:** TELEPHONE HEARING – Follow the instructions in this notice.

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**\*\*\*\*\* IMPORTANT INFORMATION – PLEASE READ THESE  
INSTRUCTIONS CAREFULLY \*\*\*\*\***

### HEARING PROCEDURES

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<sup>1</sup> In March 2020, the United States Congress passed the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), 15 U.S.C.A. § 9021, in response to the COVID-19 pandemic. The CARES Act created, among other things, a new temporary federal program called Pandemic Unemployment Assistance (“PUA”), which provides up to thirty-nine weeks of benefits to certain individuals who lost work or were unable to work due to a variety of complications stemming from the COVID-19 public health emergency. *See* 15 U.S.C. § 902.

The hearing will be your only opportunity to present witnesses and other evidence to support your case. With this in mind, you are required to call into the telephone conference bridge at the scheduled time for your hearing as shown above. Call 720-279-0026 and follow the instructions provided when you call. . . .

Be Available at Scheduled Hearing Time. You must call into the conference bridge at the scheduled hearing time. All parties and witnesses must be available at the time of the hearing. . . .

A certified transcript of the March 26, 2021 telephonic hearing appears in the record. Hearing Officer Jonathan Haynes conducted the telephonic hearing, stating on the record as follows:

This is Docket No. 2021005175. The claimant is Ibraheem Sabah. It is now 2:00 p.m. on March 26, 2021. The parties will be dialing into Global Meet.

Yes, good afternoon. This is appeals hearing officer Jonathan Haynes. Is anyone currently on the line?

All right, let the record reflect, we are still waiting on the claimant to appear. So I will go ahead and let the 15-minute grace period commence.

All right, let the record reflect, it is now 2:16, the 15-minute grace period has expired and the claimant has failed to appear. So this will conclude Docket No. 2021005175.

Mr. Sabah failed to dial in to the telephonic hearing as directed in the notice mailed ten days prior to the start of the hearing.

On March 31, 2021, Mr. Sabah requested to reopen the hearing, explaining, “I have not received a phone call or voice mail or anything concerning my appeal. I cannot figure out how I got denied and a decision was made without receiving a phone call. . . .” On April 1, 2021, the Appeals Tribunal mailed an “APPEAL TRIBUNAL DECISION OF HEAIRNG AUTHORITY” to Mr. Sabah, stating that the Department’s decision “remains undisturbed” because it was Mr. Sabah’s “duty” to be present at the March 26, 2021 hearing. Officer Haynes reasoned, “The appealing party’s failure to appear prevents a finding from being made concerning the correctness of the Agency decision.” Also, on April 1, 2021, the Appeals Tribunal acknowledged receipt of Mr. Sabah’s request to reopen the hearing, as Mr. Sabah had apparently filed his request prior to receiving the decision of the Appeals Tribunal.

On April 12, 2021, the Appeals Tribunal sent Mr. Sabah an “ORDER DENYING REQUEST FOR REOPENING” stating:

The Appeals Tribunal received a letter dated 03/31/2021, requesting . . . to reopen the hearing that was originally scheduled for 3/26/2021.

This request is denied because we do not find that there was a sufficient showing of good cause for the failure to appear at the hearing.

Reasons: The Claimant has filed a request to reopen the hearing before the Appeals Tribunal. In the request, the Claimant states that they failed to follow the instructions contained in the Notice of Hearing and call into the conference bridge at the time of the appointment. The Claimant[']s reason for failing to appear is not compelling. Therefore, the request to reopen is denied. If the Claimant is dissatisfied with the outcome of the hearing, the appropriate remedy is a timely appeal to the Office of Administrative Review.

Mr. Sabah appealed the Appeal Tribunal's decision to the Commissioner's Designee, providing the following reason for his appeal:

I am attempting to reopen my case, I have missed my appointment thinking I was going to get a phone call and not having to call in to the appointment. I did not read carefully to the phone number saying that I must call in and was not informed prior to any conversations that this is the format of these appointments.

The Commissioner's Designee affirmed the Appeals Tribunal on May 14, 2021 and mailed the "STATE OF TENNESSEE DECISION OF THE COMMISSIONER'S DESIGNEE" to Mr. Sabah on May 17, 2021, stating:

The Claimant has not established good cause for missing the hearing in light of the clear instructions on the notice of telephonic hearing to call in for the hearing. Based upon the entire electronic and documented record in this cause, the Commissioner's Designee hereby finds that the Appeals Tribunal correctly determined that the Agency Decision should remain undisturbed as the appealing party did not appear for the hearing to offer testimony on the issue.

Mr. Sabah timely filed for judicial review on June 21, 2021 in the Davidson County Chancery Court. On October 20, 2021, Chancellor Lyle determined that the case should be transferred to Sumner County, Tennessee because Mr. Sabah alleged he was employed in Sumner County. The Sumner County Chancery Court held a hearing on February 11, 2022 and entered its written order affirming the decision of the Commissioner's Designee on March 23, 2022. The chancery court found the decision was supported by substantial and material evidence, stating:

23. The Department is justified in its [sic] decision to deny the reopening of the appeal in that the Petitioner was appropriately provided instructions on the conduct of the telephone hearing, and was separately advised in bold faced print to read the instructions carefully. However, Petitioner admittedly failed to do so.

24. Therefore, there is substantial and material evidence in the record to support the Commissioner's Designee[']s Findings of Fact that the rehearing in the matter should be denied and further, both the statutory law and case law indicate that the Court should accept those evidentiary Findings of Fact. Therefore, the Complaint of the Petitioner Ibraheem N. Sabah is respectfully denied, and the decision of the Commissioner's Designee is upheld.

Mr. Sabah filed a pro se notice of appeal to this Court on April 21, 2022. Mr. Sabah requested oral argument before this Court; however, he failed to appear in court on the day the case was scheduled to be heard. Thus, the case was submitted for determination on the parties' appellate briefs.

#### STANDARD OF REVIEW

We have previously set forth the standard of review we employ in unemployment compensation matters as follows:

This Court reviews administrative unemployment compensation decisions using the same standard employed by trial courts. *Ford v. Traughber*, 813 S.W.2d 141, 144 (Tenn. Ct. App. 1991); *Armstrong v. Neel*, 725 S.W.2d 953, 955 (Tenn. Ct. App. 1986). The standard is more narrow than the broad standard employed in other civil appeals. *Wayne Cty. v. Tenn. Solid Waste Disposal Control Bd.*, 756 S.W.2d 274, 279 (Tenn. Ct. App. 1988). It is statutorily defined and set forth in Tenn. Code Ann. § 50-7-304(i) (2004):

(2) The chancellor may affirm the decision of the board or the chancellor may reverse, remand or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(A) In violation of constitutional or statutory provisions;

(B) In excess of the statutory authority of the agency;

(C) Made upon unlawful procedure;

(D) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(E) Unsupported by evidence that is both substantial and material in the light of the entire record.

We defer to the decisions of administrative agencies when they are acting within their area of specialized knowledge, experience, and expertise. *Wayne Cty.*, 756 S.W.2d at 279.

*Moore v. Neeley*, No. W2006-00438-COA-R3CV, 2006 WL 3371132, at \*2-3 (Tenn. Ct. App. Oct. 6, 2006).

Here, the chancery court affirmed the decision of the Commissioner's Designee on the basis that the decision was supported by substantial and material evidence. Substantial and material evidence "is defined as 'such relevant evidence as a reasonable mind might accept to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration.'" *Phillips v. Phillips*, No. E2015-00407-COA-R3-CV, 2015 WL 5882527, at \*4 (Tenn. Ct. App. Oct. 8, 2015) (quoting *Sweet v. State Tech. Inst. at Memphis*, 617 S.W.2d 158, 161 (Tenn. Ct. App. 1981)). Substantial and material evidence generally "requires something less than a preponderance of the evidence, but more than a scintilla or glimmer." *Kovatch v. Comm'r of Lab. & Workforce Dev.*, No. E2020-01744-COA-R3-CV, 2022 WL 110796, at \*3 (Tenn. Ct. App. Jan. 12, 2022) (quoting *Wayne Cty.*, 756 S.W.2d at 280). Essentially, "[a]ll that is needed to support the decision is a finding that it was warranted by the record and had a reasonable basis in the law." *Tenn. Credit Union v. Powell*, No. M2018-01384-COA-R3-CV, 2019 WL 2526171, at \*3 (Tenn. Ct. App. June 19, 2019) (citing *Cawthron v. Scott*, 400 S.W.2d 240, 242 (Tenn. 1996)).

#### ANALYSIS

As a preliminary matter, we recognize that Mr. Sabah is a pro se litigant. This Court has explained the following regarding our duties toward pro se litigants and their adversaries:

Parties who decide to represent themselves are entitled to fair and equal treatment by the courts. The courts should take into account that many pro se litigants have no legal training and little familiarity with the judicial system. However, the courts must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary. Thus, the courts must not excuse pro se litigants from complying with the

same substantive and procedural rules that represented parties are expected to observe.

*Young v. Barrow*, 130 S.W.3d 59, 62-63 (Tenn. Ct. App. 2003) (citations omitted); *see also Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct App. 2003).

We begin with the premise that it is the applicant's burden to establish his or her entitlement to unemployment benefits. *Irvin v. Binkley*, 577 S.W.2d 677, 679 (Tenn. Ct. App. 1978) (citing *Reese v. Hake*, 199 S.W.2d 569, 570 (Tenn. 1947) (“[T]he burden of establishing a claimant's right to benefits under the Unemployment Compensation Law rests on the claimant.”); *see also* TENN. COMP. R. & REGS. 0800-11-04-.07(1) (“The burden of proof is on the claimant for benefits so long as such claimant is asserting the affirmation of the issue involved.”). Mr. Sabah was initially denied pandemic unemployment assistance for his “failure to provide sufficient proof of employment.” Mr. Sabah appealed this determination; however, he failed to appear at the telephonic hearing before the Appeals Tribunal to present any evidence in support of his claim.

Pursuant to the Rules and Regulations of the Tennessee Department of Labor and Workforce Development, Tenn. Comp. R. & Regs. 0800-11-02-.04(1), “[f]ailure of a party to appear at a hearing shall not result in a decision being automatically rendered against such party.” Rather, “[t]he Appeals Referee shall grant a rehearing if good cause is shown, including good cause for not appearing at the scheduled hearing.” TENN. COMP. R. & REGS. 0800-11-02-.04(2)(a); *cf.* TENN. COMP. R. & REGS. 0800-11-03-.04(3) (“Within ten (10) days after the scheduled date of hearing, rehearing *may* be granted upon showing of good cause, including good cause for not appearing at the scheduled hearing, or may be ordered on the Board of Review's own motion for cause.”) (emphasis added). Thus, we must consider whether the determination that Mr. Sabah has not shown “good cause” is supported by substantial and material evidence in light of the entire record.

“In Tennessee, ‘good cause’ has more often been defined by what it is not, rather than what it is.” *Stovall v. UHS of Lakeside, LLC*, No. W2013-01504-COA-R3-CV, 2014 WL 12980366, at \*11 (Tenn. Ct. App. Apr. 22, 2014). Although the precise contours of what constitutes “good cause” are not exceedingly well defined, we are not persuaded that Mr. Sabah's failure to carefully read instructions on how to dial in to the teleconference constitutes “good cause.” In *Estate of Blakenship v. Bradley Healthcare and Rehabilitation Center*, 653 S.W.3d 709, 719 (Tenn. Ct. App. 2022), we consulted Black's Law Dictionary to articulate the definition of “good cause” and stated that the term means “[a] legally sufficient reason. [It] is often the burden placed on a litigant . . . to show why a request should be granted or an action excused.” Further, in *Estate of Blankenship* we noted that “[t]his Court has consistently held that mistakes in calendaring, secretarial shortcomings, and attorney oversight do not constitute good case.” *Estate of Blakenship*, 653 S.W.3d at 719 (citing *G.F. Plunk Constr. Co., Inc. v. Barrett Props. Inc.*, 640 S.W.2d 215, 218 (Tenn. 1982)).

Mr. Sabah gave the following “Reason for Appeal”:

. . . I am attempting to reopen my case, I have missed my appointment thinking I was going to get a phone call and not having to call in to the appointment. *I did not read carefully to the phone number saying that I must call in* and was not informed prior to any conversations that this is the format of these appointments

From these statements, we discern that Mr. Sabah believes his oversight in failing to “read [the instructions] carefully” constitutes good cause for his failure to attend the hearing. We disagree. Failure to read the instructions is not a “legally sufficient reason” to fail to appear for the telephonic hearing for which he had notice. We note that Mr. Sabah timely complied with other deadlines on appeal and timely filed other documents relative to his claims. Mr. Sabah’s excuse that he did not carefully read the instructions regarding the call-in procedures for his telephonic appeal does not constitute good cause. *See e.g., Jenkins v. Manpower on Site at Proctor & Gamble*, 106 S.W.3d 620, 625 (Mo. Ct. App. June 17, 2003) (finding that a pro se litigant’s “failure to read the notice properly was not good cause for him to miss his telephone hearing.”). Therefore, we agree with the chancery court that there is substantial and material evidence and a reasonable basis in law to affirm the finding that Mr. Sabah did not show good cause for his failure to attend the hearing.

Despite not including it in his Statement of Issues Presented for Review, Mr. Sabah attempts to raise an issue under 42 U.S.C. § 1983; however, this Court cannot entertain an issue not presented to and decided by the lower court. *See Gibson v. Bikas*, 556 S.W.3d 796, 810 (Tenn. Ct. App. 2018) (quoting *Dorrier v. Dark*, 537 S.W.2d 888, 890 (Tenn. 1976)) (determining an issue not presented to the trial court was not properly before this Court because our jurisdiction is “limited in authority to the adjudication of issues that are presented and decided in the trial courts”). The trial court did not rule on any issues related to 42 U.S.C. § 1983, thus we are unable to entertain Mr. Sabah’s arguments relative to that statute on appeal and deem them waived.

#### CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are assessed against the appellant, Ibraheem Sabah, for which execution may issue if necessary.

/s/ Andy D. Bennett  
ANDY D. BENNETT, JUDGE