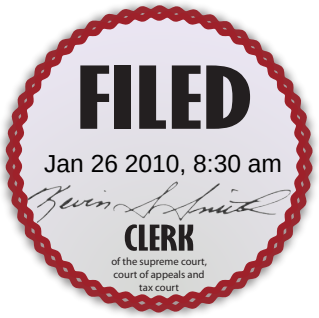

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IN THE
COURT OF APPEALS OF INDIANA

S.E.P.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-0908-EX-725
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT, and HFH COLLISION, LLC.,	)	
	)	
Appellee.	)	

APPEAL FROM THE REVIEW BOARD
OF THE DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 09-R-02593

January 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

S.P. appeals the decision of the Review Board of the Department of Workforce Development (the "Review Board") reversing the decision of the Administrative Law Judge ("ALJ") to award unemployment benefits to S.P. For our review, S.P. raises a single issue, which we restate as whether the Review Board's decision that S.P. voluntarily quit his employment without good cause is reasonable. Concluding sufficient evidence supports the Review Board's findings and its decision is reasonable, we affirm.

Facts and Procedural History

S.P. began working for HFH Collision ("HFH") as an auto detailer in January of 2008. Although apparently an excellent worker, S.P. had a problem with excessive absenteeism and was inconsistent in reporting his absences. As a result, HFH warned S.P. he could be terminated if he continued to be absent too often, especially if he failed to report his absences.

On September 2, 2008, S.P. called HFH to report he would not be coming for work that day. An unknown individual answered the phone, told S.P. he had been terminated, and hung up the phone. S.P. did not know to whom he had spoken. S.P. assumed his employment was terminated and stopped going to work. He never attempted to contact his supervisor or anyone else in authority to confirm or question his termination. HFH, apparently unaware of S.P.'s call, made many attempts to contact S.P., calling his home phone, cell phone, and the emergency contact listed in his employment record. HFH left voicemail messages on S.P.'s home phone and at the

emergency contact number. HFH also called local hospitals and the county jail attempting to locate S.P.[1] to no avail.

S.P.'s direct supervisor did not receive notice that S.P. had called off work on September 2nd nor was he apparently aware S.P. had been told he was terminated. As a result, the supervisor logged S.P. as a "no call no show." ALJ Hearing Exhibits at 19. When S.P. failed to show up for work the next day, his supervisor again listed him as a "no call no show" and recommended his termination. Id. at 20. On September 5, 2009, S.P.'s supervisor completed an employee separation record stating "[S.P.] did not show up for work three consecutive days in a row 9/2/08-9/4/08." Id. at 21. HFH's employee manual states an "employee failing to attend work or report to their supervisor for three (3) consecutive days will be considered to have voluntarily terminated his/her employment with HFH …." Id. at 14.

On February 20, 2009, a claims deputy awarded S.P. unemployment benefits. HFH appealed the award and a hearing was held before an ALJ on June 1, 2009. The ALJ affirmed the award of benefits, finding HFH discharged S.P. and failed to meet its burden of proving the discharge was for good cause. HFH appealed the ALJ's decision to the Review Board, which reversed the decision of the ALJ. The Review Board concluded a reasonable employee who had been informed by an unknown person of his termination would contact a direct supervisor to confirm his termination. Because S.P. ceased coming to work and never attempted to contact HFH after being informed of his

[1] S.P. had previously experienced health problems that led to a prolonged hospitalization and had told a co-worker that he had once been incarcerated.

termination, the Review Board found S.P. voluntarily left work without good cause. S.P. now appeals.

Discussion and Decision

I. Standard of Review

Any decision of the Review Board is conclusive and binding as to all questions of fact. Ind. Code § 22-4-17-12(a). However, when an applicant challenges a decision of the Review Board as contrary to law, our review is limited to a two-part inquiry into: (1) "the sufficiency of the facts found to sustain the decision"; and (2) "the sufficiency of the evidence to sustain the findings of facts." Ind. Code § 22-4-17-12(f); McClain v. Review Bd. of the Ind. Dep't of Workforce Dev., 693 N.E.2d 1314, 1317 (Ind. 1998). Under this standard of review, we are called upon to review: "(1) determinations of specific or 'basic' underlying facts, (2) conclusions or inferences from those facts, sometimes called 'ultimate facts,' and (3) conclusions of law. McClain, 693 N.E.2d at 1317. "[B]asic facts are reviewed for substantial evidence [and] legal propositions are reviewed for their correctness." Id. at 1318. With respect to ultimate facts, this court must determine whether the Review Board's finding of ultimate fact is a reasonable one. "The amount of deference given to the Board turns on whether the issue is one within the expertise of the Board." Id.

II. Voluntarily Leaving Employment

An employee who voluntarily leaves his employment without good cause is disqualified from receiving unemployment compensation benefits. Ind. Code § 22-4-15-1(a). The determination of whether an employee voluntarily left employment or was

terminated is a question of fact for the Review Board. Indianapolis Osteopathic Hosp., Inc. v. Jones, 669 N.E.2d 431, 433 (Ind. Ct. App. 1996). We will reverse that determination only if reasonable persons would be bound to reach a conclusion opposite that of the Review Board. Id.

S.P. called HFH to report his absence on September 2, 2008. S.P. did not ask to speak specifically with his supervisor as required by the employee manual; rather, S.P. told the unknown person who answered the phone he would not be coming in that day. The unknown person told S.P. he had been terminated. S.P.'s supervisor testified he had no knowledge S.P. had called in sick that day, and a warning report submitted by HFH indicates S.P. was considered a "no call no show" on both September 2nd and 3rd. HFH made several attempts to contact S.P. at his home, on his cell phone, and through his emergency contact number, leaving voicemail messages on S.P.'s home phone and on the phone of his emergency contact person. In addition, HFH attempted to locate S.P. at local hospitals fearing he had been hospitalized. Despite these many attempts by HFH to contact him, S.P. never made any attempt to contact HFH until months later.

Even if S.P. was reasonable in initially believing the unknown person's assertion he had been fired, his continued belief is not reasonable based upon the many ensuing attempts by HFH to contact him and his refusal to return the calls. In light of this, a reasonable person could conclude from the evidence that S.P. decided not to show up for work and not to contact HFH to explain his absence. HFH's employee manual states an employee will be considered to have voluntarily terminated his employment after three consecutive unreported absences. Therefore, sufficient evidence supports the Review

Board's finding that S.P. voluntarily left his employment with HFH without good cause and the finding is reasonable. As a result, we affirm the decision of the Review Board reversing the ALJ and finding S.P. ineligible for unemployment compensation benefits.

Conclusion

The Review Board's decision that S.P. voluntarily left his employment without good cause is reasonable and supported by the evidence.

Affirmed.

BAKER, C.J. and BAILEY, J., concur