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APPELLANT PRO SE:

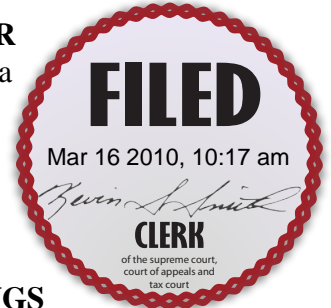
A.C.  
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**IN THE  
COURT OF APPEALS OF INDIANA**

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A.C., )  
)  
Appellant-Claimant, )  
)  
vs. )  
)  
REVIEW BOARD OF THE INDIANA )  
DEPARTMENT OF WORKFORCE )  
DEVELOPMENT, )  
)  
Appellee, )  
)  
and )  
)  
N. P. S., LLC, )  
)  
Appellee-Employer. )

No. 93A02-0908-EX-740

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APPEAL FROM THE REVIEW BOARD OF THE INDIANA DEPARTMENT OF  
WORKFORCE DEVELOPMENT

**March 16, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

A.C., *pro se*, appeals the decision of the Unemployment Insurance Review Board of the Indiana Department of Workforce Development (“Review Board”) that adopted and incorporated the Administrative Law Judge’s (“ALJ”) findings of fact and conclusions of law denying him unemployment benefits. A.C.’s issue, restated, is: whether the Review Board’s decision that he voluntarily left his employment without good cause, and thus is not entitled to unemployment benefits, is contrary to the law and the evidence.

We affirm.

**FACTS AND PROCEDURAL HISTORY**

Beginning in January 2008, A.C. worked for N.P.S., LLC (“NPS”), a telephone “call center,” as a full-time customer service representative sales agent. *Tr.* at 1. On April 10, 2008, A.C. received and signed a copy of NPS’s attendance policy, which stated, “You should call every day you are absent unless you are on an approved leave of absence. An unreported absence of one workday will be considered a no call no show or job abandonment and will be deemed a resignation.” *Id.* at 5; *Appellee’s App.* at 9. On October 5, 6, and 7, 2008, A.C. failed to either report to work or call in about the absences. Pursuant to policy, NPS considered A.C. to have resigned on October 7, 2008.

Sometime thereafter, A.C. applied for unemployment benefits, and on February 9, 2009, a claims deputy of the Department of Workforce Development (“DWD”) determined that “from the information available, it cannot be established that [A.C.] quit voluntarily,” and decided he was eligible to receive unemployment benefits. *Appellant’s App.* at 4. Several days later, NPS appealed the deputy’s determination of eligibility.

Pursuant to a notice sent to both parties, an ALJ held a telephonic hearing on May 15, 2009, to determine whether A.C. had voluntarily left his employment without good cause. Karen Hughes, the Human Resources Administrator for NPS participated in the telephonic hearing. Although A.C. had received notice of the hearing, he failed to return the written acknowledgement indicating that he desired to participate in the hearing, so the ALJ proceeded to hold the hearing without him.<sup>1</sup>

During the hearing, Hughes presented evidence that A.C. missed work on October 5, 6, and 7, 2008 and that she had advised A.C.’s supervisors by email of his absences. She testified that A.C. had agreed to and signed NPS’s attendance policy form, and the ALJ admitted a copy of that document into evidence. Hughes testified that, after A.C. failed to report to work on those October dates, NPS never heard from him again; rather, “He just quit coming to work.” *Tr.* at 5.

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<sup>1</sup> On May 4, 2009, the Appellate Division of the DWD mailed a Notice of Hearing to A.C. and to NPS. The Notice informed the parties of the date and time of the scheduled hearing. The first page of the Notice expressly stated, “PLEASE RETURN the participation slip with your phone number. The judge will call you at the time of the hearing.” *Appellee’s App.* at 2 (emphasis in original). The following two pages provided detailed instructions and information, and the last page was the participation slip or acknowledgement for each party. It stated, “RETURN THIS PAGE BY FAX OR MAIL WITH YOUR PHONE NUMBER[.]” *Id.* at 5. The Notice advised, “Hearings may proceed in the absence of either or both of the parties.” *Id.* at 3.

Following the hearing, the ALJ issued a decision reversing the deputy's determination that A.C. was entitled to benefits. The ALJ found that A.C. "voluntarily left employment but not for good cause in connection with work within the meaning of the law." *Appellant's App.* at 5. A.C. appealed the decision to the Review Board, and on July 14, 2009, the Review Board adopted and incorporated by reference the ALJ's findings and conclusions and affirmed the ALJ's decision, without additional evidence or a hearing. A.C. now appeals.

### **DISCUSSION AND DECISION**

Indiana's Unemployment Compensation Act provides that any decision of the Review Board shall be conclusive and binding as to all questions of fact. Ind. Code § 22-4-17-12(a). Review Board decisions, however, may be challenged as contrary to law. Ind. Code § 22-4-17-12(f); *Best Chairs, Inc. v. Review Bd. of Ind. Dep't of Workforce Dev.*, 895 N.E.2d 727, 730 (Ind. Ct. App. 2008). In that circumstance, the reviewing court makes a two-part inquiry where the court examines the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of fact. *Id.* Under this standard, the court reviews (1) determinations of specific or basic underlying facts, (2) conclusions or inferences from those facts, and (3) conclusions of law. *Davis v. Review Bd. of Ind. Dep't of Workforce Dev.*, 900 N.E.2d 488, 491 (Ind. Ct. App. 2009) (citing *McClain v. Review Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1317 (Ind. 1998)). The appellate court neither reweighs the evidence nor assesses the credibility of witnesses and considers only the evidence favorable to the Review Board's findings. *McClain*, 693

N.E.2d at 1317. Our task is to determine whether the decision of the Review Board is reasonable in light of its findings. *Best Chairs*, 895 N.E.2d at 730. We will not reverse the Review Board’s decision unless reasonable people would be bound to reach a different conclusion. *Davis*, 900 N.E.2d at 492.

The purpose of the Unemployment Compensation Act is to provide benefits to those who are involuntarily out of work, through no fault of their own, for reasons beyond their control. *Id.* Consistent with the purpose of unemployment compensation laws, a stricter standard is imposed on those who voluntarily quit working. *Id.*

Here, A.C. argues that he is entitled to unemployment benefits for being “discharged by [NPS] for an unjust cause[.]” *Appellant’s Br.* at 5. A.C.’s brief asserts that the ALJ’s findings that he quit his job are “completely false,” explaining that he was on an approved leave of absence and that, after being gone a couple of days, he left messages at NPS, but no one returned his calls. *Id.* at 7. As an appellate court, we cannot determine the validity of A.C.’s factual allegations, which are being asserted for the first time to any tribunal.<sup>2</sup> A.C.

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<sup>2</sup> By letter dated June 11, 2009, A.C. appealed to the Review Board to reverse the ALJ’s decision, and in that letter A.C. offered his version of events about why he missed work. However, he did not explain or assert why he did not participate in the ALJ’s hearing, nor did he request an opportunity to offer evidence to the Review Board on that issue. *Appellee’s App.* at 13. The Review Board issued its decision in July 2009 (affirming the decision of the ALJ), and thereafter A.C. wrote a letter on August 4, 2009 to the Review Board (which is also attached to his Appellant’s Case Summary filed with this court on September 23, 2009), in which he asserted, among other things, his reasons for not participating in the telephonic hearing before the ALJ. *Id.* at 14-17. To the extent that he desires this court to review the issue of his nonparticipation in the ALJ’s hearing, and whether good cause existed for his failure to return the acknowledgment, we cannot do so as the matter has been waived. Ind. Appellate Rule 46(A)(6), (8); *Baird v. ASA Collections*, 910 N.E.2d 780, 786 (Ind. Ct. App. 2009) (party may not present an argument or issue to appellate court unless party raised it to trial court); *see also Ramsey v. Review Bd. of Ind. Dep’t of Workforce Dev.*, 789 N.E.2d 486, 488 (Ind. Ct. App. 2003) (in his appellant’s brief, employee presented “facts” that were not presented below and not supported by page reference to record).

should have presented these facts to the ALJ, but because A.C. did not return the written acknowledgement, he did not participate in the hearing. Consequently, the only evidence presented to the ALJ was that submitted by NPS. Specifically, Hughes presented evidence to the ALJ that A.C. did not report to work on October 5, 6, and 7, 2008, and that she advised his supervisors and the Human Resources manager of those absences. She also established that in April 2008 A.C. had signed and acknowledged NPS's policy that missing one day of work without calling constitutes a "no call[,] no show or job abandonment" and will be deemed a resignation. *Appellee's App.* at 14. No contrary evidence was presented to refute NPS's assertion that A.C. voluntarily quit his job and did not return.

An employee who voluntarily leaves employment without good cause in connection with the work is not entitled to unemployment compensation benefits. Ind. Code § 22-4-15-1; *Davis*, 900 N.E.2d at 492. The determination of whether an employee quit for good cause is a question of fact for the Review Board, and it is the employee's burden to establish that he or she quit for good cause. *Davis*, 900 N.E.2d at 492.

Proceeding on the premise that A.C. quit his job at NPS, the relevant inquiry is whether he did so for good cause, which would involve matters such as whether NPS's demands on A.C. were "so unreasonable and unfair" that a reasonably prudent person would be impelled to quit work under similar circumstances. *See Davis*, 900 N.E.2d at 492 (citing *Best Chairs*, 895 N.E.2d at 727)). Having failed to appear or present testimony to the ALJ, A.C. has failed to sustain his burden of proof that he quit for good cause. The ALJ's determination that A.C. "voluntarily left employment but not for good cause" is supported

by the evidence. We affirm the decision of the Review Board, which adopted those findings.

Affirmed.

DARDEN, J., and MAY, J., concur.