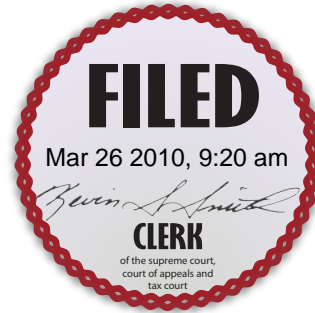


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

| | | |
|-------------------------------------|---|-----------------------|
| H.T., |) | |
| |) | |
| Appellant, |) | |
| |) | |
| vs. |) | No. 93A02-0907-EX-662 |
| |) | |
| HOOSIER TANK & MANUFACTURING, INC., |) | |
| |) | |
| Appellee. |) | |

APPEAL FROM THE UNEMPLOYMENT INSURANCE REVIEW BOARD
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
Case No. 09-R-02110

March 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

H.T., acting pro-se, appeals the decision of the Unemployment Insurance Review Board of the Indiana Department of Workforce Development (“the Board”) denying his application for unemployment benefits. He challenges the Board’s determination that he was discharged for just cause. We affirm.

Facts and Procedural History

Hoosier Tank & Manufacturing, Inc. (“Hoosier Tank”) discharged H.T., an operator of manufacturing machinery, for falsification of documents purporting to impose a light duty restriction and explain a work absence. In deciding that H.T. was discharged for just cause and thus ineligible for unemployment benefits, the Board adopted and affirmed the following order of the Administrative Law Judge (“the ALJ”), entered after a hearing was conducted:

FINDINGS OF FACT: The Administrative Law Judge (ALJ) enters the following findings of fact. The claimant worked for this employer from April 10, 2006 until December 18, 2008. The employer is a manufacturer of air reservoir tanks for air brake systems. The claimant worked full time as an operator, 1st shift – 6:00 a.m. to 4:30 p.m., earning \$12.00 per hour.

The employer has an attendance policy which assesses two (2) points for excused absences with a doctor’s note and five (5) points for unexcused absences.

By December 5, 2008, the claimant had accumulated eleven (11) points.

Sometime after December 15, 2008, the claimant submitted to the employer a doctor’s note which purported to excuse his absence and give him light duty December 14, 2008 through December 28, 2008. (See Employer Exhibit C, pg. 1)

The employer became suspicious of the note for the reasons that the address and phone number were not correct and the claimant was allowed to lift twenty

(20) to thirty (30) pounds. Usually a doctor gives a lighter lifting restriction for a back injury.

Upon investigation, the employer found that the claimant was not seen by Dr. Black on December 14, 2008. (See Employer Exhibit C, pg. 3)

The employer contacted the claimant and advised him that his note was invalid and gave him an opportunity to correct the error, if any. Claimant went to the emergency room at the St. Joseph Regional Medical Center for the purpose of obtaining a note. There was no forthcoming note from a Dr. Black. The claimant, thereafter, submitted another doctor's note from Dr. Thomas Sweeney which was also found to be fraudulent. (See Employer Exhibit C, pgs. 6 & 7)

On December 18, 2008 the plant shut down for holiday break. Before the return from the holiday break, the employer terminated the claimant's employment for falsifying documents. (See Employer Exhibit E)

CONCLUSIONS OF LAW: The ALJ concludes the claimant was discharged for just cause within the meaning of Indiana Code 22-4-15-1. An individual who is discharged for just cause in connection with employment is ineligible to receive unemployment insurance benefits. Ind. Code § 22-4-15-1(a). Discharge for just cause includes discharge "for any breach of duty in connection with work which is reasonably owed an employer by an employee." Ind. Code § 22-4-15-1(d)(8). Discharge for just cause in connection with employment includes discharge for the employee's willfully disregarding the employer's interest or the employee's willful disregard of the employee's duties. Osborn v. Review Board of the Indiana Employment Security Division, 381 N.E.2d 495, 498 (Ind. [Ct.] App. 1978).

Just cause can be established by showing a carelessness and negligence of such a degree or recurrence as to manifest equal culpability, wrongful intent, evil design, or to show an intentional or substantial disregard of the employer's interests, or the employee's duties or obligations to his employer. Winer vs. Review Board, Ind. App. 1950, 95 N.E.2d 214; Wakshlag vs. Review Board, Ind. App. 1980, 413 N.E.2d 1078.

There is a breach of duty if the claimant's conduct is of such a nature that a reasonable employee would understand that the conduct in question was a violation of a duty owed the employer and that he would be subject to discharge for engaging in the activity or behavior. Hehr. v. Review Board, 534 N.E.2d 1122 (Ind. [Ct.] App. 1989).

The claimant owed a duty to his employer not to submit doctor notes which had been falsified. When the claimant submitted fraudulent doctor notes to his employer, the claimant willfully disregarded the employer's interest. The claimant was discharged for just cause.

(App. 46-47.)

Discussion and Decision

In evaluating whether an individual is eligible for unemployment benefits, the question presented is whether he or she met the eligibility requirements set forth in the Indiana Unemployment Compensation Act ("the Act") and was not otherwise disqualified under the Act. Ind. State Univ. v. LaFief, 888 N.E.2d 184, 186 (Ind. 2008). The Act provides that a decision of the Board is conclusive and binding as to all questions of fact. Ind. Code § 22-4-17-12(a). Board decisions may be challenged as contrary to law, in which case we examine the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of facts. I.C. § 22-4-17-12(f).

When reviewing a decision by the Board, we analyze whether its decision is reasonable in light of its findings. Quakenbush v. Review Bd. of Ind. Dep't of Workforce Dev., 891 N.E.2d 1051, 1053 (Ind. Ct. App. 2008). We evaluate Board findings to determine whether they are supported by "substantial evidence." Id. We do not reweigh the evidence or assess witness credibility, and we consider only the evidence most favorable to the Board's findings. Id. Reversal is warranted only if there is no substantial evidence to support the Board's findings. Id. Finally, we review conclusions of law to determine whether the Board correctly interpreted and applied the law. McHugh v. Review Bd. of Ind.

Dep't of Workforce Dev., 842 N.E.2d 436, 440 (Ind. Ct. App. 2006).

An unemployed claimant is ineligible for unemployment benefits if he or she is discharged for just cause. Coleman v. Review Bd. of Ind. Dep't of Workforce Dev., 905 N.E.2d 1015, 1019 (Ind. Ct. App. 2009). The employer bears the initial burden of establishing that an employee was terminated for just cause. Id. Once the employer has met that burden, the burden then shifts to the employee to introduce competent evidence to rebut the employer's case. Hehr v. Review Bd. of the Ind. Employment Sec. Div., 534 N.E.2d 1122, 1124 (Ind. Ct. App. 1989). "Discharge for just cause" is defined by statute "to include but not be limited to":

- (1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;
- (2) knowing violation of a reasonable and uniformly enforced rule of an employer, including a rule regarding attendance;
- (3) if an employer does not have a rule regarding attendance, an individual's unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;
- (4) damaging the employer's property through willful negligence;
- (5) refusing to obey instructions;
- (6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;
- (7) conduct endangering safety of self or coworkers; or
- (8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction; or
- (9) any breach of duty in connection with work which is reasonably owed an employer by an employee.

Ind. Code § 22-4-15-1(d). Hoosier Tank claimed that H.T.'s falsification of physicians' statements constituted a breach of duty in connection with work which was reasonably owed to Hoosier Tank. It is well-established that an employee owes certain reasonably understood duties to his or her employer. McHugh, 842 N.E.2d at 441. The nature of such an

understood duty owed to the employer must be such that a reasonable employee of that employer would understand that the conduct in question was a violation of a duty owed to the employer and that the employee would be subject to discharge for engaging in such activity or behavior. Id. An employee owes a “core duty of honesty and truthfulness,” the breach of which satisfies the statutory definition of “just cause.” Id. at 442.

The evidence most favorable to the Board’s findings is as follows. H.T. was absent from work at Hoosier Tank on December 15, 2008. Thereafter, he submitted to Hoosier Tank - via a fax from his home - a note on Saint Joseph Regional Medical Center letterhead, stating:

The patient [H.T.] was seen December 14, 2008 for a pinch [sic] nerve in his back. I am placing the patient on two weeks light duty effective December 14, 2008 to December 28, 2008. The patient is not to lift more than 20-30 pounds at any given time. The patient is to return to my office on December 29, 2008 for a follow up on the injury sustained. If you have any questions or concerns about this matter you can contact me at (574) 237-7264.

Dr. Jerrold Black MD
801 East LaSalle Avenue
South Bend, IN 46617
(574) 237-7264

(Exhibits, pg 18.) Hoosier Tank’s plant manager, Michael Horvath (“Horvath”), considered the weight limit to be unusual and called the named physician to verify the restriction. Hoosier Tank received, via a fax from South Bend Clinic Immediate Care Center, a note signed by Dr. Jerrold Black stating: “A review of our records shows [H.T.] was not seen here 14 Dec 08 nor has he ever been seen at South Bend Clinic.” (Exhibits, pg. 20.)

Horvath advised H.T. that he considered the first note fraudulent and explained that H.T. had to produce a physician's note. H.T. produced a second document, hand delivered to his supervisor Jake McDale, purportedly from Saint Joseph Regional Medical Center, South Bend, and purportedly signed by Dr. Thomas Sweeney, DO of the Emergency Department. The document provided:

I am writing this letter for the patient [H.T.] because there was a mistake made on the doctor excuse giving [sic] to him by my nurse. Dr. Jerrold Black did not see the patient and is not employed by Saint Joseph Regional Medical Center of South Bend. [H.T.] was seen in the emergency room on December 14, 2008 by myself, Dr. Thomas Sweeney for a herniated disk in his back. He was unable to work under these conditions which would explain his absence from work on December 15, 2008. He was placed under light duty under my order until he was to return to his next appointment on December 26, 2008. He was then seen by Dr. Jason M. Jaronik who after the diagnosis gave him and [sic] on-call family physician to follow up with Dr. Alice Isaacson for a repeat examination if he continues to have problems. The patient was then release [sic] with a prescription for Vicodin to be used as needed for the pain. I am issuing this written letter as an apology to clear up any confusion caused by my nurse's action.

(Exhibits, pg. 23.)

Hoosier Tank personnel then contacted the office of Dr. Thomas Sweeney. In response, Hoosier Tank received a handwritten notation from Dr. Sweeney's nurse indicating "This document was not written by our emergency department. This is not our letterhead and this is not Dr. Sweeney's signature." (Exhibits, pg. 24.)

The Board's determinations of fact and conclusions of law are supported by substantial evidence of record that H.T. submitted falsified documents to Hoosier Tank. Indeed, H.T. does not specifically argue there is a lack of evidence that he submitted false documents to his employer. He instead seeks "credit for two years worked without incident"

and emphasizes the humane purposes of the Act.¹ Appellant's Brief at 6. However, notwithstanding his prior satisfactory conduct on the job, H.T.'s breach of a duty of honesty and truthfulness is just cause for discharge. The Board's decision is not contrary to law.

Affirmed.

MAY, J., and BARNES, J., concur.

¹ H.T. also argues that Hoosier Tank's attendance policy was not uniformly enforced. However, this argument lacks relevance to his denial of benefits, because he was discharged not for excessive absenteeism but for submitting falsified documents to justify absenteeism.