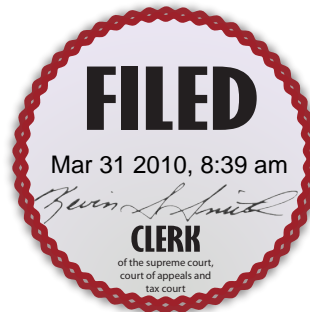


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

E.T.,)	
)	
Appellant,)	
)	
vs.)	No. 93A02-0909-EX-911
)	
REVIEW BOARD OF THE INDIANA)	
DEPARTMENT OF WORKFORCE)	
DEVELOPMENT and N.C.B.)	
)	
Appellees.)	

APPEAL FROM THE REVIEW BOARD
OF THE DEPARTMENT OF WORKFORCE DEVELOPMENT
Review Board No. 09-R-03530

March 31, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

E.T. appeals the decision of the Unemployment Insurance Review Board of the Indiana Department of Workforce Development (“Review Board”) denying her unemployment benefits. Finding that the Review Board did not abuse its discretion in refusing to consider additional evidence and that E.T. voluntarily left her employment without good cause in connection with the work, we affirm.

Facts and Procedural History

E.T. made a claim for unemployment benefits after she left her job as a branch sales and service specialist at N.C.B. in Greenfield, Indiana. A claims deputy determined that E.T. quit due to job dissatisfaction after N.C.B. violated the terms or conditions of employment and concluded that she voluntarily left employment with good cause in connection with the work. N.C.B. appealed the determination and requested a hearing before an administrative law judge.

At the telephonic hearing, Administrative Law Judge Michael Botkin (ALJ Botkin) asked E.T. why she left her job. She responded that in her workday from 8:00 AM to 5:30 or 6:30 PM, she was only permitted to take bathroom breaks during her forty-five-minute lunch break, which occurred at either 11:00 AM or 2:00 PM. E.T. testified that when she spoke with the branch manager, Rita Mohr, about the lack of bathroom breaks, Mohr responded that N.C.B. does not give paid bathroom breaks. E.T. also related an incident when she needed to use the restroom but her immediate supervisor made her stay at her window until another employee came back from her lunch break. After waiting five minutes she closed her window and left. E.T. further

testified that other employees were permitted bathroom breaks outside of their lunch breaks. E.T. testified that she also left her job because she was working as a teller 100% of the time when she was told during her first interview that the position would entail 80% sales and 20% teller duties.

Branch manager Mohr testified that E.T. did not state in her letter her reasons for resigning. Mohr said that E.T. asked her about bathroom breaks, but E.T. never said anything about the specific incident with her immediate supervisor or generally not being allowed to use the restroom. Mohr testified that E.T.

was permitted to use the restroom whenever she did not have a customer at her window and she needed to do so. Or if she had a customer at her window . . . , she could still do that. The thing that we always ask everybody to do is let us know where you're going, how long you're going to be away so we can cover the window. But she could do that at any time.

Tr. p. 10. Mohr acknowledged that E.T. has difficulty standing for long periods of time and stated that she told E.T. that she could "sit down at any time she needed to as long as she didn't have a customer." *Id.* at 11. Mohr testified that the branch sales and service specialist position, also called the universal position, involves both sales and teller duties. E.T. did "70-80%" teller work when she first started working because "she was still in training. She hadn't learned the new account process yet." *Id.* at 12. Mohr further testified that she never assured E.T. that the position would entail 80% sales and 20% teller duties.

ALJ Botkin found E.T.'s testimony regarding her lack of bathroom breaks not credible and that her access to the restroom was not limited or unreasonable. He also found that the job was not misrepresented by N.C.B. before hire and that there was no

change in E.T.'s job title or duties. ALJ Botkin concluded that E.T. voluntarily left her employment without good cause in connection with the work and therefore reversed the claims deputy's initial determination. E.T. then appealed to the Review Board, which adopted and incorporated the ALJ's findings and conclusions and affirmed the ALJ's decision. E.T. now appeals.

Discussion and Decision

E.T. requests that we consider additional evidence on appeal and contends that she voluntarily left her employment with good cause in connection with the work.

I. Additional Evidence

On appeal, E.T. relies on evidence not submitted before ALJ Botkin. Specifically, she refers to four exhibits appended to her appeal of the ALJ's decision that allegedly support her contention that she voluntarily left her employment with good cause in connection with the work. The Review Board did not accept this additional evidence. Appellant's App. p. 12. The admission of evidence additional to that heard by the ALJ is within the Review Board's discretion. *Ritcheson-Dick v. Unemployment Ins. Review Bd.*, 881 N.E.2d 54, 56 (Ind. Ct. App. 2008). We review the Review Board's decision for an abuse of discretion, which occurs if the decision is arbitrary or capricious as revealed by the uncontradicted facts. *Fruehauf Corp. v. Review Bd. of Ind. Employment Sec. Div.*, 448 N.E.2d 1193, 1197 (Ind. Ct. App. 1983).

The admission of additional evidence is governed by 646 Indiana Administrative Code 3-12-8(b), which provides in pertinent part:

Each hearing before the review board shall be confined to the evidence submitted before the administrative law judge unless it is an original

hearing. Provided, however, the review board may hear or procure additional evidence upon its own motion, or upon written application of either party, and for good cause shown, together with a showing of good reason why such additional evidence was not procured and introduced at the hearing before the administrative law judge.

Assuming without deciding that E.T.'s appeal of the ALJ's decision with attached exhibits constitutes written application to the Review Board to consider additional evidence, we conclude that E.T. has failed to demonstrate good cause that the additional evidence should be accepted by the Review Board or good reason why such evidence could not have been introduced to the ALJ. Moreover, even if E.T. were to have provided good cause or good reason, she fails to argue on appeal that the Review Board abused its discretion in denying her request to consider the additional evidence. *See Smitty's Painting, Inc. v. Review Bd. of Dep't of Workforce Dev.*, 908 N.E.2d 244, 246 (Ind. Ct. App. 2009) (concluding that Review Board did not abuse its discretion by refusing to accept additional evidence when claimant failed to demonstrate good cause that additional evidence should be accepted by Review Board or good reason why such evidence could not have been introduced to ALJ). The Review Board did not abuse its discretion, and we may not consider E.T.'s additional evidence.

II. Good Cause in Connection with the Work

E.T. contends that she voluntarily left her employment with good cause in connection with the work. The Indiana Unemployment Compensation Act provides that any decision of the Review Board is conclusive and binding as to all questions of fact. Ind. Code § 22-4-17-12(a). Review Board decisions may be challenged as contrary to law, in which case we examine the sufficiency of the facts to sustain the decision and the

sufficiency of the evidence to sustain the findings of facts. *Coleman v. Review Bd. of Ind. Dep't of Workforce Dev.*, 905 N.E.2d 1015, 1019 (Ind. Ct. App. 2009). When reviewing a Review Board decision, we analyze whether the decision is reasonable in light of its findings. *Id.* We evaluate Review Board findings to determine whether they are supported by substantial evidence. *Id.* We neither reweigh the evidence nor reassess witness credibility, and we consider only the evidence most favorable to the Review Board's findings. *Id.*

A claimant who voluntarily leaves employment without good cause in connection with the work is disqualified from receiving unemployment compensation. Ind. Code § 22-4-15-1(a); *Indianapolis Osteopathic Hosp., Inc. v. Jones*, 669 N.E.2d 431, 434 (Ind. Ct. App. 1996). The burden of establishing that the voluntary termination of employment was for good cause is on the claimant. *Jones*, 669 N.E.2d at 433. The claimant must show that (1) the reasons for abandoning employment were such as to impel a reasonably prudent person to terminate employment under the same or similar circumstances and (2) the reasons are objectively related to the employment. *Id.*

Here, the evidence most favorable to the Review Board's findings shows that N.C.B. permitted E.T. to sit whenever she did not have a customer at her window and never unreasonably restricted her use of the restroom. The evidence also shows that E.T.'s job title or duties never changed and N.C.B. never promised E.T. that the branch sales and service specialist position would entail 80% sales and 20% teller duties. All of this evidence constitutes substantial evidence to support the ALJ's findings that E.T.'s testimony regarding the lack of breaks was not credible, E.T.'s access to the restroom

was not limited or unreasonable, N.C.B. did not misrepresent the job before hire, and E.T.'s job title or duties did not change. These findings in turn provide a reasonable basis for the ALJ's conclusion that E.T. voluntarily left her employment without good cause in connection with the work.

Affirmed.

NAJAM, J., and BROWN, J., concur.