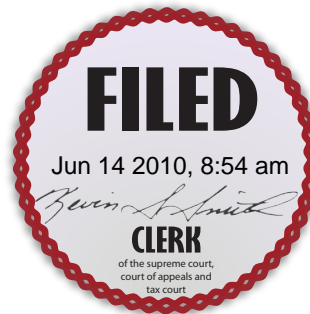


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

S.H.,)
)
Appellant,)
)
vs.)
)
REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT AND D.O. MCCOMB)
& SONS, INC.,)
)
Appellee.)

No. 93A02-0912-EX-1191

APPEAL FROM THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
Case Number: 09-R-04781

June 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

S.H. 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 properly determined that S.H. was discharged for just cause, we affirm.

Facts and Procedural History

S.H. worked as a vital statistics associate at D.O. McComb & Sons, Inc., in Fort Wayne, Indiana. An essential part of her job was to complete and file death certificates with the State within seven days. Upon receiving complaints from families, McComb & Sons became aware that S.H. was not filing death certificates in a timely manner. In May 2009 the general manager asked Michael Murphy, a manager, to help S.H. “set up a system to try to catch her up.” Tr. p. 10. Murphy set up a system to keep the paperwork on S.H.’s desk organized and explained to S.H. how the system worked and the importance of following it. S.H. did not follow the prescribed system and continued to fall behind in her work. Two weeks after his first visit, Murphy returned to S.H.’s desk, organized it, and informed S.H. again of the importance of following the system. Tracey Degitz, another McComb & Sons employee, testified that at some point, S.H. said that “[s]he didn’t like the system, she didn’t like that somebody was messing with her desk and she wasn’t going to use it.” *Id.* at 8. S.H. continued to ignore the system and continued to be late in filing death certificates with the State. Two weeks after Murphy’s second visit, S.H. was discharged.

S.H. made a claim for unemployment benefits after she was terminated. A claims deputy determined that due to her “willful unsatisfactory work performance,” S.H. was discharged for just cause and thus ineligible for unemployment benefits. Appellee’s App. p. 2. S.H. appealed the determination, and a telephonic hearing was held before an administrative law judge (“ALJ”).

In her decision, the ALJ cited Indiana law providing that “any breach of duty in connection with work which is reasonably owed an employer by an employee” is discharge for just cause. *See* Ind. Code § 22-4-15-1(d)(9).¹ She then affirmed the claims deputy’s determination that S.H. was ineligible for benefits, concluding,

[T]he claimant’s failure to get work filed appropriately was causing delays for certificates to be issued by the state. The claimant was verbally warned by Mr. Murphy. Furthermore, the ALJ concludes that this was causing great hardship upon families, who sometimes could not file for insurance or other documents until the claimant completed her work. The ALJ concludes that the claimant was repeatedly warned to improve. The claimant failed to follow procedures set up to help her improve. Therefore, the ALJ concludes the claimant was discharged for just cause

Appellee’s App. p. 19. S.H. then appealed to the Review Board, which adopted and incorporated the ALJ’s findings and conclusions and affirmed the ALJ’s decision. S.H. now appeals.

Discussion and Decision

S.H. contends that she was not discharged for just cause. 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

¹ Although the ALJ cited Indiana Code section 22-4-15-1(d)(8), we note that the proper citation is to Indiana Code section 22-4-15-1(d)(9).

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 is ineligible for unemployment benefits if he or she is discharged for just cause. *Id.* The employer bears the initial burden of establishing that an employee was terminated for just cause. *Doughty v. Review Bd. of Dep't of Workforce Dev.*, 784 N.E.2d 524, 526 (Ind. Ct. App. 2003). Once met, the burden then shifts to the employee to introduce competent evidence to rebut the employer's case. *Id.*

Discharge for just cause is defined to include "any breach of duty in connection with work which is reasonably owed an employer by an employee." I.C. § 22-4-15-1(d)(9). It is well-established that an employee owes certain reasonably understood duties to his or her employer. *McHugh v. Review Bd. of Ind. Dep't of Workforce Dev.*, 842 N.E.2d 436, 441 (Ind. Ct. App. 2006). The nature of 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 he or she would be subject to discharge for engaging in such activity or behavior. *Id.*

In her initial appellate brief, S.H. contended that the Review Board erred in determining that she knowingly violated a reasonable and uniformly enforced rule of

McComb & Sons. Appellant's Br. p. 13; *see* I.C. § 22-4-15-1(d)(2). However, McComb & Sons did not claim a knowing violation of a reasonably and uniformly enforced rule as the basis of her discharge. Rather, McComb & Sons claimed that S.H. was discharged for breach of duties reasonably owed an employer by an employee, and this breach of duties was the basis for the Review Board's decision. Our analysis must be limited to the issue presented by McComb & Sons. *See Coleman*, 905 N.E.2d at 1019 ("We . . . must limit our analysis to [the] issue [presented by the employer] and cannot consider other grounds for Coleman's discharge."). S.H.'s reply brief thus alters her argument to address the proper issue; that is, whether she breached duties she reasonably owed McComb & Sons.

The evidence most favorable to the Review Board's findings shows that McComb & Sons became aware that S.H. was not timely filing death certificates when it received "an abundance of complaints" from families. Tr. p. 10. A manager set up and instructed S.H. to use a system to keep paperwork on her desk organized. Although she was informed twice of the importance of following the system, S.H. failed to follow it. She stated that "[s]he didn't like the system, she didn't like that somebody was messing with her desk and she wasn't going to use it." *Id.* at 8. When she continued to fail to file death certificates with the State in a timely manner, S.H. was discharged. This evidence constitutes substantial evidence to support the Review Board's findings. These findings in turn provide a reasonable basis for the Review Board's conclusion that S.H.'s failure to follow procedures and failure to timely file death certificates breached duties S.H. reasonably owed McComb & Sons.

Affirmed.

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