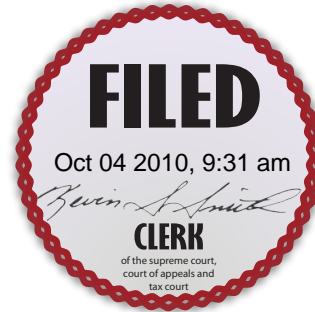


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE
COURT OF APPEALS OF INDIANA

R.R.,)	
)	
Appellant,)	
)	
vs.)	No. 93A02-0912-EX-1227
)	
REVIEW BOARD OF THE INDIANA)	
DEPARTMENT OF WORKFORCE)	
DEVELOPMENT and)	
EMPLOYER,)	
)	
Appellees.)	

APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT
OF WORKFORCE DEVELOPMENT

The Honorable Steven F. Bier, Chairperson
The Honorable George H. Baker, Member
The Honorable Lawrence A. Dailey, Member
Cause No. 09-R-5048

October 4, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant R.R. appeals from the denial of his claim for unemployment compensation benefits by the Review Board of the Indiana Department of Workforce Development (“Review Board”). We affirm.

FACTS AND PROCEDURAL HISTORY

R.R.’s employment with Employer began on October 22, 2008. R.R. was employed as a full-time semi-trailer truck driver who was paid by the load. On November 26, 2008, Employer’s warehouse supervisor requested that R.R. haul a load that had originally been assigned to another driver who had called in sick. R.R. responded by swearing at the warehouse supervisor, saying “[F***] this load, [F***] this place, don’t call me for [F***]ing dispatch tomorrow.” Tr. p. 4. However, after yelling these obscenities, R.R. decided to haul the load.

On the morning of December 1, 2008, Employer’s dispatcher called R.R. to inform him that Employer needed him to haul a load on December 2, 2008. R.R. indicated that he did not want to haul the load. The dispatcher explained that R.R. was the only HAZMAT driver available, but offered to try to find someone else to haul the load. The dispatcher told R.R. that he should anticipate hauling the load on December 2, 2008, and that she would call him back to confirm within the hour. The dispatcher attempted to contact R.R. numerous

times throughout the day, but R.R. would not answer his phone.

Eventually, the dispatcher notified the general manager who attempted to contact R.R., but was unable to do so. The general manager left a message on R.R.'s voice mail reminding him that he could be terminated if he did not return the Employer's calls in a timely fashion. R.R. finally returned the general manager's call at approximately 3:45 p.m. During this call, R.R. cursed at the general manager, stated that the general manager was "not allowed to leave messages," and indicated that he "was going to call his [a]ttorney." Tr. p. 7. The general manager concluded the phone call by informing R.R. that "his services were no longer needed" and that his employment was terminated. Tr. p. 4.

On February 12, 2009, a claims deputy for the Department of Workforce Development determined that R.R. was not discharged for just cause, and as a result, was eligible to receive unemployment benefits. On February 19, 2009, Employer timely appealed the claims deputy's determination. On June 4, 2009, an Administrative Law Judge ("ALJ") reversed the claims deputy's determination after finding that R.R. was discharged for just cause. R.R. timely appealed the ALJ's determination to the Review Board. On November 12, 2009, the Review Board affirmed the ALJ's determination. This appeal follows.

DISCUSSION AND DECISION

On judicial review of an unemployment compensation proceeding, we determine whether the decision of the Review Board is reasonable in light of its findings. *Value World Inc. of Ind. v. Review Bd. of Ind. Unemployment Dept. of Workforce Dev.*, 927 N.E.2d 945, 947 (Ind. Ct. App. 2010). We are bound by the Review Board's resolution of all factual

matters; thus, we neither reweigh evidence nor reassess witness credibility. *Id.* at 948. Rather, we consider only the evidence most favorable to the Review Board's decision and the reasonable inferences to be drawn therefrom, and if there is substantial evidence of probative value to support the Review Board's conclusion, it will not be set aside. *Id.* When, however, an appeal involves a question of law, we are not bound by the agency's interpretation of law, and we will reverse a decision if the Review Board incorrectly interprets a statute. *Id.*

Indiana Code section 22-4-15-1(d) (2008) provides that the term "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." In construing this provision of the statute, this court provided as follows:

Determination of just cause is a question of fact. It is conduct evidencing such willful or wanton disregard of the employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his employee, or a carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional or substantial disregard of the employer's interest or of the employee's duties or obligation to his employer.

Yoldash v. Review Bd. of Ind. Employment Sec. Div., 438 N.E.2d 310, 312 (Ind. Ct. App. 1982) (citation, emphasis, and quotation omitted). No hard and fast rule can be fixed defining in precise terms what constitutes such misconduct as to deny an employee unemployment compensation benefits. *Id.* Each case must be determined on its own particular facts. *Id.*

In *Yoldash*, this court concluded that an employee was discharged for just cause after the employee directed an outburst toward three different supervisors that included abusive

and offensive language. *Id.* at 314-15. In this outburst, the employee cursed at one supervisor, and accused one supervisor of being a “communist” and “fascist,” and another of being drunk. *Id.* at 311. In concluding that the employee was discharged for just cause, the court stated that given this court’s deference toward the Review Board in making factual findings, the court could not say that reasonable persons would not have arrived at the same conclusion as the Review Board. *Id.* at 314.

Here, the Review Board determined that R.R. was discharged for just cause after R.R. directed numerous profanity-laced outbursts toward various supervisors. In these outbursts, R.R. refused to complete work assigned by his supervisors, cursed at various supervisors, and threatened to call his attorney and sue Employer. The Review Board determined that R.R.’s conduct evidenced such a willful or wanton disregard for the standards of behavior which Employer has a right to expect of his employees. Upon appeal, we conclude that the Review Board’s determination that R.R. was discharged for just cause was supported by substantial evidence in the record, including the testimony of Employer’s representative. R.R.’s argument effectively amounts to a request that we reweigh the evidence and reassess witness credibility, which we will not do. *See Value World*, 927 N.E.2d at 948.

The judgment of the Review Board is affirmed.

DARDEN, J., and BROWN, J., concur.