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IN THE COURT OF APPEALS OF INDIANA

C.S.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 93A02-1005-EX-537
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and ESTES EXPRESS LINES,	)	
	)	
Appellees-Plaintiffs.	)	

APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT OF WORKFORCE DEVELOPMENT
The Honorable Steven F. Bier, Chairperson
Cause No. 10-R-1457

December 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

C.S. applied for unemployment benefits after being discharged by Estes Express Lines (Estes). A deputy in the local office of the Indiana Department of Workforce Development (IDWD) determined that C.S. was not entitled to unemployment benefits because Estes established that C.S. was discharged for just cause. C.S. appealed this determination and requested a hearing before an administrative law judge (ALJ). Following an evidentiary hearing, the ALJ affirmed the determination of the deputy and concluded that C.S. was discharged for just cause and, therefore, not entitled to benefits. C.S. appealed to the Review Board of the Indiana Department of Workforce Development (the Review Board), which adopted the findings and conclusions entered by the ALJ and affirmed the denial of unemployment benefits. C.S. appeals the determination of the Review Board.

We affirm.

The facts favorable to the Review Board's determination are that from 1998 to 2009, C.S. worked at Estes's Terminal 94 in Fort Wayne, Indiana as the office manager, which was a salaried position. Her duties included inputting payroll for that facility on what was termed Hub Roster payroll sheets (Hub Roster). On November 4, 2009, Tom Lamb, Estes's district manager, became aware that C.S.'s pay fluctuated from pay period to pay period and a subsequent investigation revealed she was being paid an extra $35 to $70 per week for what C.S. coded on the Hub Roster as "dock work." *Transcript* at 14. Lamb met with C.S. and Greg Hamilton, the terminal manager, to inquire about the extra pay. Lamb learned that C.S.'s grandson was performing landscaping work at Terminal 94 and that compensation for that work was being paid to C.S. in the manner noted above. With Hamilton's permission, C.S. was "charging a dock work account for the work performed, and adding that Dock Work

payment to [C.S.'s] paycheck." *Appellant's Appendix* at 3.[1] This was done notwithstanding a May 1, 2008 written directive from Estes that landscaping contracts should be invoiced as such – i.e., as lawn mowing. In bypassing the proper procedure for billing and paying the landscaping work, C.S. falsified company documents and "created the impression that she was being paid for work that she was not doing." *Id.* at 4. As a result, Estes terminated C.S.'s employment for violating the company's Code of Conduct Policy, which set forth a list of prohibited conduct, including the following: "**Dishonesty and Lying** – Providing false, inaccurate and/or incomplete information. This includes: … Company Documents – including employment application, medical forms and all other employment related forms." *Id*. at 25 (emphasis in original).

C.S. filed a claim for unemployment benefits and an IDWD deputy determined that C.S. was not entitled to unemployment benefits because Estes established that she was discharged for just cause in that she knowingly violated a reasonable and uniformly enforced rule of Estes. On December 3, 2009, C.S. appealed that decision and a telephonic hearing was conducted by an ALJ on February 26, 2010. On March 2, 2010, the ALJ entered findings and conclusions in support of his decision to affirm the denial of benefits. C.S. appealed to the Review Board. After reviewing the record, the Review Board adopted and incorporated by reference the ALJ's findings of fact and conclusions of law and affirmed the ALJ's decision.

[1] The pages of C.S.'s appendix are not sequentially numbered. Indiana Appellate Rule 51(c) provides: "All pages of the Appendix shall be numbered at the bottom consecutively, without obscuring the Transcript page numbers, regardless of the number of volumes the Appendix requires." We encourage counsel to comply with this rule in future appellate endeavors.

C.S. contends the Review Board erred in determining that she knowingly violated a rule of her employer and that said rule was uniformly enforced. We have recently set forth the standard of review applicable in this context:

> "The Indiana 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 may, however, be challenged as contrary to law, in which case the reviewing court examines the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of facts. Ind. Code § 22-4-17-12(f). Under this standard, we review determinations of specific or basic underlying facts, conclusions or inferences drawn from those facts, and legal conclusions. *McClain v. Review Bd. of the Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1317 (Ind. 1998).
>
> When reviewing a decision by the Review Board, our task is to determine whether the decision is reasonable in light of its findings. *Abdirizak v. Review Bd. of Dept. of Workforce Dev.*, 826 N.E.2d 148, 150 (Ind. Ct. App. 2005). Our review of the Review Board's findings is subject to a "substantial evidence" standard of review. *Id*. In this analysis, we neither reweigh the evidence nor assess witness credibility, and we consider only the evidence most favorable to the Review Board's findings. *Id*. Further, we will reverse the decision only if there is no substantial evidence to support the Review Board's findings. *Id*."

Davis v. Review Bd. of Ind. Dep't of Workforce Dev., 900 N.E.2d 488, 492 (Ind. Ct. App. 2009) (quoting *Best Chairs v. Review Bd. of Ind. Dep't of Workforce Dev.*, 895 N.E.2d 727, 730 (Ind. Ct. App. 2008)). We will not reverse the Review Board's decision unless reasonable people would be bound to reach a different conclusion. *See Davis v. Review Bd. of Ind. Dep't of Workforce Dev.*, 900 N.E.2d 488.

The Review Board determined that C.S. was terminated for just cause pursuant to Ind. Code Ann. § 22-4-15-1(d)(2) (West, Westlaw through 2010 2nd Regular Sess.), which defines "just cause" as a "knowing violation of a reasonable and uniformly enforced rule of an employer". In order to establish a prima facie case for violation of an employer rule under

I.C. § 22-4-15-1(d)(2), the employer must show that the claimant: (1) knowingly violated; (2) a reasonable; and (3) uniformly enforced rule. *Beckingham v. Review Bd. of Ind. Dep't of Workforce Dev.* 927 N.E.2d 913 (Ind. 2010). After the employer has met its burden, the claimant must present evidence to rebut the employer's prima facie showing. *Id*.

C.S. does not challenge the reasonableness of Estes's "false-information" rule. She does, however, contend Estes failed to prove that C.S. knew she had violated the rule by adding her grandson's landscaping fees to her own compensation under an inaccurate designation and not billing it separately and accurately. She also challenges the finding that the rule was uniformly enforced.

We begin with the claim that Estes did not establish that C.S. knew about the rule she was found to have violated. In this context, the parameters of the specific rule in question can be found in a May 1, 2008 memo from Michael McClendon, Estes's Construction Manager, to Estes's terminal managers. This memo stated, in pertinent part:

> Dear Terminal Manager,
>
> Estes Express Lines would like your local landscaping contractor or grass cutter to discontinue submitting weekly invoices or bills for services render [sic] after each job. Each vendor needs to submit monthly invoices by the 30th for payment in about 2-3 weeks. New vendors or new employees performing this work for the first time need to submit a signed W-9 Tax Form with their first invoice. Their PO # will be the same as your Terminal # or Shop #. Add, "Shop" if it's applicable to sites where only the shop is active. Include the dates of each service & price charged for that service. Each vendor must include his or her own invoice #. That will be the only identification for them to cross reference the check with their monthly service records. Estimates for large jobs, like fence clearing, weeding, or tree trimming should be faxed to M.E. McClendon prior to performing the work. The Terminal Manager can authorize emergency jobs. But, emergency repair estimates, invoices & details of the work performed will need to submitted [sic] to M.E. McClendon for approval and payment.

> Again, monthly landscaping service invoices must be submitted each month to me for approval and payment by the 30th.

Appellant's Appendix at 30. C.S. contends she was unaware of the existence of the memo, and hence the rule, because it was sent to the terminal manager, not her. Regardless of whether C.S. knew about the memo, Estes presented evidence tending to show that she knew of the general policy reflected therein. Montell Maners was the Midwest Regional Human Resources Manager for Estes and he conducted the investigation into this matter for Estes. He testified that he asked C.S. during the course of his investigation whether she knew how Estes paid vendors for work performed for Estes. According to Maners: "Her response was yes, that they send us invoices and [Hamilton] approves them and sends them to Richmond to get paid." *Transcript* at 25. Thus, there was evidence tending to show that C.S. knew the proper procedure for paying vendors such as those providing lawn care at the facility.

C.S. admitted she did not follow the prescribed procedure, but claims that she was given explicit permission by Hamilton, Randy Drake (Estes's District Manager in charge of Terminal 94 at the relevant time), and McClendon to pay for the lawn care as she had done. Hamilton corroborated C.S.'s claim, but both Drake and McClendon denied they gave such permission to C.S or Hamilton. Inasmuch as the Review Board found, based upon these denials, that C.S. did not have permission from those with authority to deviate from the stated policy in paying for the lawn-care services,[2] we are bound to reject C.S.'s claim to the contrary. *See Davis v. Review Bd. of Ind. Dep't of Workforce Dev.*, 900 N.E.2d 488. Thus,

[2] The Review Board adopted the ALJ's finding that "this was outside the scope of the authority of the terminal manager and [C.S.] to process the grandson's work in this fashion." *Appellant's Appendix* at 4.

C.S. knew the proper procedure for paying for lawn care, but did not follow it. Instead, she added the fee for that service to her own compensation without explaining what it was for.

Finally, C.S. contends the Review Board erred in finding that the policy was uniformly enforced. In support of this contention, she notes her testimony at the hearing before the ALJ that a similar situation arose in 2005 with another Estes employee. According to C.S.,

> [w]hen discussing whether this was the only time this practice had occurred, Mr. Hamilton stated that Mr. McClendon authorized [C.S.] to be paid in this manner for doing some company painting work and further authorized another employee to be paid in a similar manner when his son cleaned up the company dock area; that employee was not discharged.

Appellant's Brief at 6. We note first that, even assuming C.S. was correct about the prior, similar occurrence with another employee, she did not indicate whether that employee was involved in preparing the payroll sheets that resulted in the employee being paid for someone else's work. In order to evaluate uniformity we must first define the class of persons against whom uniformity is measured. *McClain v. Review Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314 (Ind. 1998). In this case, such would include persons responsible for the preparation of documents concerning the Hub Roster payroll sheets. There is no indication that the other employee C.S. alluded to fits in this category. Moreover, C.S. submitted no

evidence documenting her claims with respect to the purported prior occurrences of the kind for which she was terminated. She simply claimed that it was so. The Review Board was not bound to believe her unsubstantiated claims in this regard. Finally, it may be inferred from the materials before us that Hamilton was also discharged in connection with these events. Hamilton was C.S.'s immediate superior and by virtue of that position, as well as by his own admitted involvement in the filing of inaccurate Hub Roster payroll sheets in this particular instance, he was in the class of persons against whom uniformity is measured. He and C.S. both received the same treatment – they were terminated.

In summary, there was substantial evidence to support the Review Board's findings of fact, which in turn were sufficient to sustain its conclusion that C.S. was terminated for just cause. *See Davis v. Review Bd. of Ind. Dep't of Workforce Dev.*, 900 N.E.2d 488. Reasonable people would not be bound to conclude otherwise. *See id*.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.