

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

L.V.,  
*Appellant*

v.

Review Board of the Indiana Department of Workforce  
Development,  
*Appellee*



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April 26, 2024

Court of Appeals Case No.  
23A-EX-2067

Appeal from the Review Board of Indiana Department of  
Workforce Development

Gabriel B. Paul, Chairman  
Lawrence A. Daily, Member  
Heather D. Cummings, Member

Case Nos.  
23-R-2081

**Memorandum Decision by Judge Bailey**  
Judges Crone and Pyle concur.

**Bailey, Judge.**

## Case Summary

- [1] In this consolidated appeal, L.V., appearing pro-se, challenges three decisions of the Review Board of the Indiana Department of Workforce Development (“Review Board”) affirming determinations of an Administrative Law Judge (“ALJ”). L.V. presents the sole issue of whether the Review Board erred in finding that L.V. received overpayment of unemployment benefits due to unreported deductible income, i.e., wages. We affirm.

## Facts and Procedural History

- [2] During April of 2020, L.V. accepted employment at Jewel-Osco d/b/a Grocery Works in Crown Point (“Grocery Works”), at a rate of \$16.00 per hour. L.V. was scheduled to work only twelve to twenty hours per week during the Covid-19 pandemic; accordingly, he applied for and received Pandemic

Emergency Unemployment Compensation in the amount of \$109.00 weekly.

L.V. separated from his employment with Grocery Works in early 2021.<sup>1</sup>

[3] L.V. exclusively used his smartphone to apply for his weekly benefits. He encountered difficulties with this technology and the Workforce Development website, Uplink. According to L.V., he was advised by a Workforce Development employee to “bypass” an inquiry and “the only way to bypass was to select No when asked did you work.” Appellant’s Brief at 5.

[4] On July 6, 2023, a Workforce Development claims adjuster determined that L.V. had been overpaid due to his unreported wages that would cause a corresponding suspension or reduction of unemployment benefits. Specifically, the claims adjuster determined, as to Case No. 23-R-2081:

L.V. earned wages exceeding his weekly unemployment benefit amount in the weeks ending on October 24, 2020, October 31, 2020, November 7, 2020, November 14, 2020, November 21, 2020, November 28, 2020, December 5, 2020, December 12, 2020, December 19, 2020, January 16, 2021, January 30, 2021, February 6, 2021, February 20, 2021, and February 27, 2021, and benefits were suspended for those weeks.

L.V. earned wages less than his weekly unemployment benefit amount in the weeks ending on December 26, 2020, January 2, 2021, January 9, 2021, January 23, 2021, and February 13, 2021.

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<sup>1</sup> The dates of separation from employment listed in the Appendix documents are not consistent. Grocery Works is no longer in business and did not participate in the proceedings below.

Benefits were reduced by \$62.00, \$85.00, \$63.00, \$62.00, and \$63.00, respectively.

(Appellee's App. at 2-3.)

[5] As to Case No. 23-R-2082, the claims adjuster found that L.V. had earned severance pay and vacation pay during the week ending March 6, 2021, and determined that L.V.'s "benefits from week ending 03/06/2021 through week ending 04/10/2021 are not payable as your deductible income exceeds your weekly benefit amount." (*Id.* at 12.)

[6] As to Case No. 23-R-2083, the claims adjuster determined:

L.V. received wages that exceeded his weekly unemployment benefit amount in the weeks ending April 25, 2020, May 9, 2020, May 16, 2020, May 23, 2020, May 30, 2020, June 6, 2020, June 13, 2020, June 20, 2020, July 4, 2020, July 11, 2020, July 18, 2020, July 25, 2020, August 1, 2020, August 8, 2020, August 22, 2020, September 5, 2020, September 12, 2020, September 19, 2020, September 26, 2020, October 3, 2020, October 10, 2020 and October 17, 2020, and benefits were suspended for those weeks.

For the week ending August 15, 2020, L.V. received wages of less than his weekly unemployment benefit and his benefits were reduced by \$94.00.

(*Id.* at 18-22.)

[7] L.V. appealed those determinations. On August 15, 2023, the ALJ conducted a consolidated hearing and affirmed the determination of the claims adjuster in

each case. L.V. appealed to the Review Board. On August 25, the Review Board affirmed the ALJ decisions without revision. L.V. now appeals.

## Discussion and Decision

[8] The standard of review on appeal of a decision of the Board is threefold: (1) findings of basic fact are reviewed for substantial evidence; (2) findings of mixed questions of law and fact – ultimate facts – are reviewed for reasonableness; and (3) legal propositions are reviewed for correctness. *Recker v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 958 N.E.2d 1136, 1139 (Ind. 2011) (citing *McClain v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 693 N.E.2d 1314, 131 (Ind. 1998)). Ultimate facts are facts that involve an inference or deduction based on the findings of basic fact. *Id.* (citing *McClain*, 693 N.E.2d at 1317). Where such facts are within the special competence of the Board, this Court will give greater deference to the Board’s conclusions, broadening the scope of what can be considered reasonable. *Id.* (citing *McClain*, 693 N.E.2d at 1318).

[9] At the time that L.V. received benefits, Indiana Code Section 22-4-15-4(a)(1) (2021) provided that an individual “shall be ineligible for ... benefit rights for any week with respect to which the individual receives, is receiving, or has received payments” in the form of “deductible income as defined and applied in IC 22-4-5-4 and IC 22-4-5-2” if the deductible income equals or exceeds “the individuals’ weekly benefit[.]” Deductible income included, but was not strictly limited to: “remuneration for services, dismissal pay, vacation pay, pay for idle time, holiday pay, sick pay, traveling expenses, net earnings from self-

employment, awards by the National Labor Relations Board, and payments made pursuant to the Fair Labor Standards Act.” *M.W. v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 193 N.E.3d 1021, 1024-25 (Ind. Ct. App. 2022) (citing I.C. § 22-4-5-1(a)), *trans. denied*. At that time, deductible income was calculable after excluding “the first three dollars (\$3), or twenty percent (20%) of the claimant’s weekly benefit amount rounded to the next lowest dollar, whichever is the larger.” I.C. § 22-4-5-1(b) (2021). If the deductible income was less than the weekly benefit amount, the claimant was “entitled to receive for such week benefits reduced by the amount of such payments.” I.C. § 22-4-15-4(b).

[10] L.V. does not challenge the findings of fact regarding his earning of wages. “We accept unchallenged factual findings as true.” *Z.C. v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 213 N.E.3d 1101, 1108 (Ind. Ct. App. 2023). And L.V. does not challenge the legal conclusion that his earnings constitute deductible income. Rather, he argues:

I think the Deductible Income should be dismissed on the [sic] account of DWD weekly earnings are incorrect and there is no way to obtain anything from Grocery Works. After DWD Fraud investigator Davis Casselman did his investigation and reviewed my paperwork and screenshots he agreed that it wasn’t done intentionally and saw the system had flaws. I believe [pursuant to] Indiana Code § 22-4-13-1(i)[:] (1) the benefits were received by the individual without fault of the individual (b) [sic] because of an error by the employer or the department (3) repayment would cause economic hardship to the individual, should apply to me.

Appellant's Brief at 7. As best we can discern L.V.'s argument, he contends that his obligation to repay any overpayment of unemployment benefits should be waived because flaws in the Uplink website he accessed by smartphone during the Covid-19 pandemic precluded his accurate reporting.

[11] Indiana Code Section 22-4-13-1(i) provides:

Liability for repayment of benefits paid to an individual (other than an individual employed by an employer electing to make payments in lieu of contributions) for any week may be waived upon the request of the individual if:

(1) the benefits were received by the individual without fault of the individual;

(2) the benefits were the result of payments made:

(A) during the pendency of an appeal before an administrative law judge or the review board under IC 22-4-17 under which the individual is determined to be ineligible for benefits; or

(B) because of an error by the employer or the department;  
and

(3) repayment would cause economic hardship to the individual.

[12] It may subsequently be determined that L.V. is not liable for repayment.

However, the decisions of the Review Board that are the subject of this appeal do not include a determination regarding waiver or non-waiver of L.V.'s

repayment obligation.<sup>2</sup> The decisions on appeal concern the assessment of deductible income and the consequent reduction or suspension of benefits.

L.V. has shown no error in this regard.

## Conclusion

[13] The Review Board did not err in determining that L.V. was overpaid unemployment benefits because he received unreported deductible income, i.e., wages, in multiple weeks during which he received unemployment benefits.<sup>3</sup>

[14] Affirmed.

Crone, J., and Pyle, J., concur.

APPELLANT PRO SE

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<sup>2</sup> L.V. has not submitted a transcript of the ALJ hearing, and the Review Board did not conduct an evidentiary hearing. However, the parties appear to agree that the ALJ hearing did not focus upon statutory waiver of the repayment obligation.

<sup>3</sup> Based upon the limited record before us and the narrow issue presented, we do not undertake the task of reviewing the mathematical accuracy of any repayment demand from Work Force Development in this case. However, the record in a related appeal, 23A-EX-2254, and this appeal, 23A-EX-2067, collectively reveal that there are overlapping claims adjuster determinations (some based upon earned benefits and others based upon wages for the same weeks). The affected weeks are those ending on May 30, 2020, July 4, 2020, February 13, 2021, February 20, 2021, January 23, 2021, December 26, 2020, September 12, 2020, January 9, 2021, and February 27, 2021.



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