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**IN THE
COURT OF APPEALS OF INDIANA**



CRAIG S. CONRAD,)

Appellant,)

vs.)

No. 93A02-1103-EX-261

REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT,)

Appellee.)

APPEAL FROM THE REVIEW BOARD
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
Case No. 11-R-00671

October 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Craig S. Conrad (“Conrad”), proceeding pro se, appeals from the Review Board’s final order affirming the Administrative Law Judge’s (“ALJ”) decision that he was not entitled to unemployment benefits after his employment was terminated by his former employer, Colwell General, Inc. (“Colwell”). Conrad raises numerous issues for our review; because most of these are waived, we consolidate and restate these as whether the ALJ properly concluded that Colwell discharged Conrad for just cause.

We affirm.

Facts and Procedural History

Conrad began employment as a coding associate in Colwell’s manufacturing operations on July 14, 2010. That day, Conrad signed a document acknowledging that he received Colwell’s employee handbook, which included Colwell’s attendance policy. The attendance policy set forth a “no call, no show” procedure by which an employee who would not attend work on a specific day is required to call Colwell and speak directly with or leave a voicemail message for that employee’s supervisor. Failure to comply with the “no call, no show” procedure twice would result in voluntary termination of employment on the part of the employee. This policy applied to all hourly employees, including Conrad.

On November 17, 18, and 19, 2010, Conrad left voicemail messages informing his supervisor, Ryan Ford (“Ford”), that he would not be present at work those days. On November 22, 2010, Conrad called Colwell but did not speak with Ford or leave a voicemail message with Ford. On November 24, 2010, Colwell notified Conrad that his employment

had been terminated for failure to comply with the “no call, no show” policy on the prior two days.

Conrad applied for unemployment benefits. On December 20, 2010, a claims deputy denied Conrad’s application, and Conrad timely appealed. An administrative hearing was conducted by telephone on January 21, 2011, in which Conrad participated as well as Mariah Keirn (“Keirn”), Colwell’s Human Resources Coordinator. Ford and Marci Gustin (“Gustin”), Colwell’s receptionist, testified at the hearing.

On January 21, 2011, the ALJ issued his decision affirming the claims deputy’s denial of unemployment benefits. On February 7, 2011, Conrad appealed the ALJ’s decision to the Review Board. On March 2, 2011, the Review Board issued its final order affirming the ALJ’s decision.

This appeal followed.

Discussion and Decision

Conrad appeals the Review Board’s final order affirming the ALJ’s decision concluding that Colwell terminated his employment for just cause. Conrad also contends that the ALJ failed to make adequate inquiry with Rachel Welch-McGuire (“McGuire”), Colwell’s Human Resources Manager, who sent Conrad’s termination letter but did not participate at the hearing; to make adequate inquiry as to changes in shift supervision; and to properly acknowledge the effect of Conrad’s transition from probationary to full-time employment status.

With respect to these latter arguments, the Review Board contends that Conrad has

waived our review. Where a party to an administrative appeal “raises an issue for the first time on appeal,” we may find waiver “even with regard to constitutional issues, such as lack of due process.” Miller v. Indiana Dep’t of Workforce Dev., 878 N.E.2d 346, 353 (Ind. Ct. App. 2007). Here, Conrad did not object to McGuire’s absence from the hearing or request a continuance to a time when she would be available. Conrad neither objected to the ALJ’s failure to address the other evidentiary matters nor made further inquiry himself. We therefore conclude that Conrad has waived this Court’s review to the extent these arguments raise due process issues not addressed before the ALJ.

We turn now to the remaining issue, namely, whether the ALJ properly concluded that Colwell discharged Conrad for just cause. Our statutes set forth some, though not all of the situations in which an employer may discharge an employee for just cause, thereby disqualifying the employee for some or all unemployment benefits. See Ind. Code § 22-4-15-1(d). Among these situations is where the employee knowingly violates “a reasonable and uniformly enforced rule of an employer, including a rule regarding attendance.” I.C. § 22-4-15-1(d)(2). The employer must bear the initial burden of establishing termination for just cause. Coleman v. Review Bd. of Ind. Dep’t of Workforce Dev., 905 N.E.2d 1015, 1019-20 (Ind. Ct. App. 2009). Where violation of an employer’s rule is at issue, the employer must show not merely that the employee’s conduct violated a known rule, but that the employee knowingly violated the rule. Id. at 1020. Where the employer meets its burden, the employee must then present evidence to rebut the employer’s prima facie showing. Id.

Here, Conrad does not argue that Colwell’s “no call, no show” policy was not known

or consistently enforced, but rather that he complied with the policy. Thus, he challenges the evidence supporting the Board’s findings of basic fact and the reasonableness of its ultimate finding that he was discharged for just cause. We review the Board’s findings of basic fact to determine whether they are supported by substantial evidence in the administrative record. McClain v. Review Bd. of Ind. Dep’t of Workforce Dev., 693 N.E.2d 1314, 1317 (Ind. 1998). Under this standard, we do not reweigh the evidence or assess the credibility of witnesses, and look only to the evidence that most favors the Board’s findings. Stanrail Corp. v. Review Bd. of Dep’t of Workforce Dev., 735 N.E.2d 1197, 1202 (Ind. Ct. App. 2000), trans. denied. We review the Board’s inferences and conclusions of ultimate fact—that is, its final decision as to whether Conrad qualifies for unemployment benefits—for reasonableness in light of its findings of basic fact. McHugh v. Review Bd. of Ind. Dep’t of Workforce Dev., 842 N.E.2d 436, 440 (Ind. Ct. App. 2006).

Colwell introduced exhibits setting forth Conrad’s knowledge and receipt of the “no call, no show” policy. That policy states:

Employees must notify the Company of all absences prior to the start of their shift. You must also notify the Company prior to the start of your shift if you will be late reporting to work. Proper notification means contacting your Supervisor or leaving a message as directed by attendance procedures.

Separate from the infraction system, the Attendance Policy also assesses the following penalties:

No Call – No Show – 1st Event Final Written Warning

No Call – No Show – 2nd Event Voluntary Resignation, Employment
Terminated

(Ex. E-2 & E-3, emphasis in original.) Keirn indicated that the “attendance procedures” under the “no call, no show” policy required an employee who would be absent from work to leave a voicemail with that employee’s supervisor. Keirn also testified that the “no call, no show” policy was uniformly applied to all hourly employees like Conrad.

Conrad testified that he called on November 17, 18, 19, and 22, 2010, to let his supervisor know he would not be at work on those days or for the remainder of the week of November 22, and introduced records showing that he had made phone calls to his employer on those days. Ford and Keirn both testified that Ford received voicemails on November 17, 18, and 19, but received neither a direct call nor a voicemail message from Conrad on November 22.

Conrad claimed that he had spoken with Gustin on November 22, and that Gustin told him that she would pass on his message to Ford. But Gustin testified that she did not speak with Conrad on November 22 or pass a message from Conrad to Ford regarding Conrad’s absence that day or the following day. Gustin testified that when she did receive employee attendance calls, she always forwarded them directly to an employee’s supervisor without taking a message, and Ford indicated that he had never received any employee attendance messages directly from Gustin. Conrad provided neither argument nor evidence that the policy was unreasonable. Thus, the ALJ’s basic findings, that while Conrad made a call to his employer on November 22, he did not properly comply with the “no call, no show” attendance policy that day, are based in substantial evidence.

Having properly found that Conrad knew of and failed to comply with the policy on

November 22, though he had properly done so three days in a row the preceding week, the ALJ could infer that Conrad knowingly failed to comply with the “no call, no show” policy. Because we may look only to evidence in the record, may not reweigh evidence or reassess witness credibility, and review the Board’s inferences for reasonableness without reassessing those inferences in favor of one or another party, see McHugh, 842 N.E.2d at 440, we decline Conrad’s request that we reassess the significance of his testimony and cellular phone billing records. We therefore conclude that the ALJ’s ultimate finding that Conrad knowingly failed to comply with the “no call, no show” policy on November 22 and 23, 2010, and that Conrad was therefore discharged for just cause, was reasonable in light of the findings of basic fact.

Affirmed.

MATHIAS, J., concurs.

CRONE, J., concurs in result with opinion.

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REVIEW BOARD OF THE INDIANA)	
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)	
Appellee.)	
)	

CRONE, Judge, concurring in result

I fully agree with Judge Bailey’s decision and the result reached by the majority. I write separately, however, to acknowledge my recent concurring opinion in *S.S. LLC v. Review Board of the Indiana Department of Workforce Development*, No. 93A02-1101-EX-56, 2011 WL 3757633 (Ind. Ct. App. Aug. 25, 2011), in which I underscored the importance of complying with Indiana Administrative Rule 9(G)(1)(b)(xviii) by using the parties’ initials instead of their full names in Review Board case captions and opinions. Because Judge Bailey has chosen to disclose the full name of the claimant in this case, I am compelled to concur in result only.