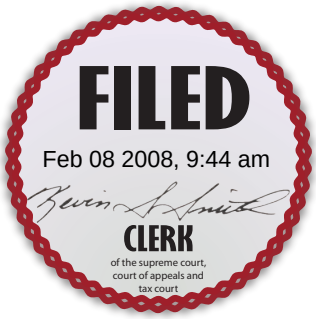

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IN THE
COURT OF APPEALS OF INDIANA

LAKE COUNTY BOARD OF COMMISSIONERS, AND LAKE COUNTY SHERIFF'S DEPARTMENT,	)	
Appellant,	)	
vs.	)	No. 93A02-0707-EX-600
REVIEW BOARD OF THE INDIANA	)	

DEPARTMENT OF WORKFORCE DEVELOPMENT and GARY MIDKIFF,)
)
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 Larry A. Dailey, Member
Cause No. 07-R-01532

February 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

The Lake County Board of Commissioners and the Lake County Sheriff's Department (collectively, "Lake County") appeal the decision of the Review Board of the Indiana Department of Workforce Development ("Review Board") to uphold an award of unemployment benefits for Gary Midkiff. We affirm.

Issue

Lake County presents one issue for review, which we restate as whether the Review Board's findings of fact are sustained by the evidence and whether it correctly interpreted and applied Indiana law to affirm unemployment benefits for Midkiff.

Facts

After a twenty-year career as a police officer, Midkiff was hired as a civilian information technology manager at the Sheriff's Department. One of Midkiff's duties

was to manage a database, the Spillman system, utilized by local law enforcement agencies to collect and share investigation information. Data in the Spillman system was typically of a confidential nature.

On January 23, 2007, Midkiff received a subpoena commanding him to appear, give testimony and to bring Spillman-generated files regarding two specific street addresses. The subpoena was issued by the plaintiff in a civil case pending against the Lake County Sheriff personally. It required Midkiff to appear in court at 1:30 that afternoon. Midkiff gathered the necessary documents and reported to the courthouse. He encountered the Sheriff and the Sheriff's attorney outside of the courtroom. Midkiff gave the documents to the Sheriff's attorney and waited outside the courtroom but was not called to testify. Shortly after, the Sheriff's Department fired Midkiff. In a letter to Midkiff, the Sheriff stated that the termination was the result of Midkiff's overall work performance, the failure to follow procedures in dealing with the secure information of the Spillman system, and the disclosure of computer data.

Midkiff applied for unemployment benefits and on February 28, 2007, an Indiana Workforce Development claims deputy determined he was eligible. On March 2, 2007, Lake County appealed the eligibility determination. On May 21, 2007, an administrative law judge ("ALJ") conducted a telephonic hearing and affirmed the claims deputy's award of unemployment benefits. The ALJ concluded that Midkiff did not knowingly violate employment policies and that Lake County did not establish Midkiff was terminated for just cause, and therefore that Midkiff was entitled to benefits. On June 5, 2007, Lake County appealed the ALJ's decision to the Review Board. The Review

Board adopted the findings of fact and conclusions of law of the ALJ and affirmed the decision on July 2, 2007. This appeal followed.

Analysis

Lake County contends the Review Board erred in affirming an award of unemployment benefits for Midkiff. It contends that critical facts are not sustained by the record, that the decision is not sustained by the findings of fact, and that the decision is contrary to law.

"Any decision of the Review Board shall be conclusive and binding as to all questions of fact." Ind. Code § 22-4-17-12(a). The Indiana Unemployment Compensation Act provides that when the Board's decision is challenged as contrary to law, the reviewing court is limited to a two-part inquiry into the "sufficiency of the facts found to sustain the decision" and the "sufficiency of the evidence used to sustain the findings of fact." I.C. § 22-4-17-12(f). Under this standard, we review: 1) determinations of specific or basic underlying facts; 2) conclusions or inferences from those facts or determinations of ultimate facts; and 3) conclusions of law. McHugh v. Review Bd. of Ind. Dep't. of Workforce Dev., 842 N.E.2d 436, 440 (Ind. Ct. App. 2006).

The Review Board's findings of fact are subject to a substantial evidence standard of review. Id. Under this standard, we will not reweigh evidence or judge witness credibility. Id. We consider the evidence most favorable to the Review Board's findings and will reverse the decision only if there is no substantial evidence to support the findings. Id. We are not bound by Review Board's interpretation of the law and determine whether the Review Board correctly interpreted and applied the law. Id.

A claimant is ineligible for unemployment benefits if he or she is terminated for "just cause." I.C. § 22-4-15-1. As defined by the Indiana Code, "just cause" for termination includes a "knowing violation of a reasonable and uniformly enforced rule of an employer." I.C. § 22-4-15-1(d)(2). To establish a prima facie case of a rule violation under Indiana Code Section 22-4-15-1(d)(2), the employer must show that the claimant: 1) knowingly violated; 2) a reasonable; and 3) uniformly enforced rule. Stanrail Corp. v. Review Bd. of the Dep't. of Workforce Dev., 735 N.E.2d 1197, 1203 (Ind. Ct. App. 2000), trans. denied. To have knowingly violated an employer's rule, the claimant must know of the rule and know that his or her conduct violated the rule. Id. The burden is on the employer to prove that it terminated the employee for just cause. Id.

At the hearing before the ALJ, an official for Lake County testified that Midkiff's actions missed two steps: first, that he failed to "give notification of the subpoena to a supervisor" and second, that he got the information "without express permission." Tr. p. 14. Lake County submitted specific policies to support this claim. First, Lake County alleged that Midkiff violated Rule 5.16.03, which provided:

> Any officer who is served with a subpoena or other legal process relating to the business, operations, policies, or procedures of the department will inform the Sheriff/Chief immediately. This requirement does not apply to subpoenas relating to the prosecution of a routine criminal case.

App. p. 104.[1]

[1] We notice that the Appendix contains two different sets of page numbers. We are utilizing the numbers on the lower left side of the page.

Midkiff testified not only that he did not know of the rule, but also that he answered subpoenas in the past without informing a supervisor. Lake County contends Midkiff had knowledge of rule 5.16.03 because of his position and because the policy was written. Midkiff's own testimony negates Lake County's contention regarding this policy. The Review Board concluded that there was no probative evidence that Midkiff was aware of policy.[2] By asking us to disregard Midkiff's testimony, Lake County is asking us to reweigh evidence and judge the credibility of witnesses and we cannot engage in such reweighing on appeal. See McHugh, 842 N.E.2d at 440.

Second, Lake County contends that Midkiff knowingly violated the general policy of the Sheriff's Department prohibiting copying or altering documents when he retrieved the documents to answer the subpoena. Lake County Government's Computer Usage Policy Ordinace provided in part: "Users should not alter or copy a file belonging to another user without first obtaining permission from the owner of the file." App. p. 108. Lake County did not present any copies of this policy signed by Midkiff and he denied knowledge of the policy. The Review Board found that the parties disputed Midkiff's knowledge of the policy and concluded there was no "probative evidence offered that the claimant was specifically aware of the policies at issue." App. p. 115.

[2] The Review Board argues on appeal that Midkiff is excluded from application of policy 5.16.03 anyway because it explicitly applies to any "officer" and he was no longer an officer. Lake County contends this argument is not cogent and should be waived. We do not find that the argument lacks cogency. However, the Review Board found that all the policies were applicable to "all employees" and did not address this contention. App. p. 115. The applicability of the policy is irrelevant because the Review Board found that Midkiff was not aware of the policy.

Third, Lake County contends that the Spillman system Interlocal agreement between the Sheriff's Department and other local law enforcement agencies constituted a policy that was designed to insure confidentiality of the data. Lake County provided a copy of the agreement at the hearing, but it did not have Midkiff's signature. He acknowledged he was aware of the Spillman agreement, and that he realized a majority of the data within the system was confidential. Midkiff's awareness of the confidential nature of such information does not automatically create just cause for his termination. The dispute here is not whether the nature of the information was confidential, but instead whether Midkiff knowingly violated a rule by answering the subpoena. It is unclear how an agreement between Lake County and other agencies expressly prohibited Midkiff from answering the subpoena. Nor does the agreement expressly instruct Midkiff to give notification of subpoenas to a supervisor or to get permission before accessing information, the two violations alleged by Lake County. We conclude that substantial evidence exists to support the Review Board's findings regarding that Midkiff was not aware of applicable policies, and we sustain its decision. Because Midkiff did not knowingly violate a rule, Lake County did not have just cause to terminate him and the Review Board's decision is not contrary to law.

Written policies aside, Lake County argues that Midkiff should have known the confidential nature of the documents and data in the Spillman system, and, as such, knew that sharing the data could have disastrous consequences for his department. Lake County contends that the importance of confidentiality was not only well known to Midkiff, but also that it was "common sense." Appellant's Reply Br. p. 3. Because he

essentially should have known better, Lake County contends Midkiff was terminated for just cause because he breached confidentiality and in doing so breached a duty owed to his employer.[3]

In so arguing, Lake County urges us to adopt an alternative reason and to conclude Midkiff was discharged for just cause by breaching a duty under Indiana Code Section 22-4-15-1(d)(8). The scope of our review, however, is limited to "whether the Board made sufficient findings to support the definition it chose to apply." Trigg v. Review Bd. of Ind. Employment Sec. Div., 445 N.E.2d 1010 (Ind. Ct. App. 1983). The Review Board in this case chose to apply the definition of just cause in Indiana Code Section 22-4-15-1(d)(2) that the employee knowingly violated a uniformly enforced rule. Even if we were to find that Indiana Code Section 22-4-15-1(d)(8) constituted a basis for just cause termination, which we expressly do not, we could not reverse the Review Board's decision on such alternate grounds. Our review is limited to determining whether the Review Board's decision is reasonable in light of the facts and supported by law. We find that it is.

Conclusion

The Review Board's conclusion that Midkiff was not terminated for just cause is not contrary to law and its findings are supported by substantial evidence. We affirm.

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[3] The ALJ found and the Review Board adopted the finding that "It is unclear from the record how the documentation would have adversely affected the sheriff of the county where the claimant worked." App. p. 115. We are also unclear on this point, as the record reveals that the documentation was given to the sheriff's attorney, and not to another party, leaving the ultimate decision of disclosure to legal counsel.

Affirmed.

SHARPNACK, J., and VAIDIK, J., concur.