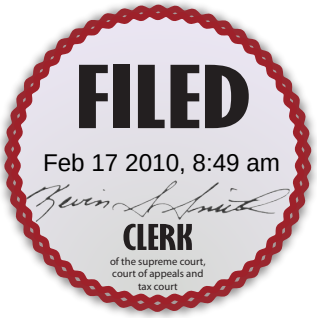

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IN THE COURT OF APPEALS OF INDIANA

KEVIN M. CORNNER,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-0906-EX-511
	)	
REVIEW BOARD OF THE INDIANA DEP'T OF WORKFORCE DEVELOPMENT And PAXTON MEDIA GROUP, INC.,	)	
	)	
Appellees.	)	

APPEAL FROM THE DEPARTMENT OF WORKFORCE DEVELOPMENT REVIEW BOARD
The Honorable Steven F. Bier, Chairperson,
The Honorable George H. Baker, Member, and
The Honorable Larry A. Dailey, Member
Cause No. 09-R-138

February 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Kevin M. Cornner, *pro se*, appeals the decision of the Review Board of the Indiana Department of Workforce Development (the "Board"), upholding an administrative law judge's ("ALJ") decision that he was ineligible for unemployment benefits.

We affirm.

ISSUES

1. Whether the Board properly determined that Cornner was discharged for just cause.

2. Whether the Board erred in denying Cornner's request to submit additional evidence.

FACTS

The evidence most favorable to the Board's decision is as follows: In April of 2008, Paxton Media Group ("Paxton") hired Cornner as a sales executive at the Cornersville News Examiner. His primary duties included selling newspaper retail advertising. On August 12, 2008, at approximately 8:00 a.m., Cornner's regional manager, Kelly Pierce, presided over a sales meeting. During the meeting, Pierce modified the territory boundaries for the sales executives' respective regions. Cornner

expressed his displeasure with the changes and became visibly irritated. Pierce noted Cornner's demeanor, as he gathered his materials and prepared to walk out of the meeting. As Cornner prepared to leave, Pierce told him that they should discuss his concerns privately after the meeting concluded. Cornner stormed from the meeting room without responding. He went to a restroom, where he remained for approximately forty-five minutes.

When Cornner returned to his work area, Pierce again asked him to join her in her office for a private discussion of the territory lines. Cornner refused. Shortly thereafter, he left the office for his sales route. At approximately 5:00 p.m., Pierce left a voicemail message for Cornner, asking him to call her before he returned to the office. Cornner did not return Pierce's call. He later testified that he got the message around 9:00 p.m. and had decided against calling back, given the lateness of the hour and the fact that Pierce's message did not communicate any sense of urgency. On the following day, August 13, 2008, Cornner arrived at the office and was discharged for insubordination stemming from his persistent refusals to discuss the problem with Pierce requested.

On September 9, 2008, a claims deputy of the Indiana Department of Workforce Development ("IDWD") determined that Cornner had not been discharged for just cause because "[i]t cannot be established [that Cornner] was insubordinate as alleged," and was therefore eligible to receive unemployment benefits. (Cornner's App. 1). On September 17, 2008, Paxton appealed the claim deputy's determination. On December 31, 2008, a telephonic evidentiary hearing was held before the IDWD, with an ALJ presiding. On

January 6, 2009, the ALJ mailed a decision, which reversed claim deputy's determination that Cornner was eligible to receive unemployment benefits and concluded that Paxton had presented sufficient evidence of just cause for Cornner's discharge.

On January 23, 2009, Cornner appealed the ALJ's decision to the Board. In a decision mailed on February 18, 2009, the Board concluded that the ALJ had failed (1) "to make sufficient findings of fact to enable the Board to adequately review her decision"; and (2) to make a credibility determination as to which party is most believable." (Cornner's App. 2-3). The Board vacated the ALJ's decision and remanded for further proceedings. On March 25, 2009, the ALJ issued a corrected decision, wherein it again concluded that Paxton had discharged Cornner for just cause, and that Cornner was ineligible to receive unemployment benefits. On April 13, 2009, Cornner appealed the ALJ's corrected decision to the Board. The Board did not conduct a hearing and rejected Cornner's proffer of additional evidence. In a decision mailed on May 7, 2009, the Board "adopt[ed] and incorporate[d] by reference the findings of fact and conclusion of law of the [ALJ] and affirm[ed]" the ALJ's corrected decision. (Cornner's App. 12). Cornner now appeals.

DECISION

Cornner argues that the Board erred in (1) concluding that Paxton discharged him for just cause; and (2) denying his request to submit additional evidence.

1. Just Cause

In challenging the Board's decision that he was discharged for just cause, Cornner argues that (1) Paxton failed to prove that he knowingly violated its rules; (2) Paxton failed to introduce documentary evidence to prove that he was discharged for just cause; (3) his conduct did not indicate wrongful intent or a wanton and willful disregard of Paxton's interests; and (4) he has additional evidence to refute Pierce's sworn testimony. We are not persuaded.

The Indiana Unemployment Compensation Act (the "Act"), codified at Indiana Code section 22-4-17-12(a), provides that any decision of the Board shall be conclusive and binding as to all questions of fact; however, when the Board's decision is challenged as contrary to law, we are not bound by its interpretation of the law. *McClain v. Review Bd. of the Ind. Dep't of Workforce Dev.,* 693 N.E.2d 1314, 1317 (Ind. 1998). In such instances, we are

> limited to a two-part inquiry into (1) the sufficiency of the facts found to sustain the decision; and (2) the sufficiency of the evidence to sustain the findings of facts. Under this standard, courts are called upon to review (1) determinations of specific or "basic" underlying facts, (2) conclusions or inferences from those facts, sometimes called "ultimate facts," and (3) conclusions of law.

Id. Accordingly, we review the Board's findings of basic fact under a "substantial evidence" standard of review. *Id.* We neither reweigh the evidence nor assess the credibility of witnesses; rather, we consider only the evidence most favorable to the Board's findings. *Quakenbush v. Review Bd. of Ind. Dept. of Workforce Development*,

891 N.E.2d 1051, 1053 (Ind. Ct. App. 2008). We reverse the Board's decision only if there is no substantial evidence to support its findings. *Id.*

The Act was enacted to "provide for payment of benefits to persons unemployed through no fault of their own." Ind. Code § 22-4-1-1. Under the Act, an individual is disqualified for unemployment benefits if he is discharged for just cause. I.C. § 22-4-15-1. In Indiana, "discharge for just cause" encompasses several specific instances of misconduct, including "any breach of duty in connection with work which is reasonably owed an employer by an employee." I.C. § 22-4-15-1(d)(8); *Giovanoni v. Review Bd. of Ind. Dept. of Workforce Development*, 900 N.E.2d 437, 439 (Ind. Ct. App. 2009).

Here, the ALJ's corrected decision reversed the claims deputy's determination granting Cornner's application for unemployment benefits based on Indiana Code section 22-4-15-1(d)(8). The ALJ's corrected determinations of fact and inferences drawn therefrom are supported by substantial evidence contained within the record. Thus, the record contains evidentiary support for the Board's decision adopting and incorporating by reference the ALJ's findings of fact and conclusion of law, and affirming the ALJ's judgment.

At the hearing before the ALJ, Pierce testified that during the August 12, 2008 sales meeting, Cornner "became very disgruntled" when the "territory distinctions, the lines between each rep," were changed. (Tr. 4). She testified that Cornner had expressed his dissatisfaction with the changes, and that the ensuing discussion had initially proceeded civilly until Cornner shook his head, "gathered up his information and stormed

out of the meeting." (Tr. 4). Pierce testified that as Cornner prepared to leave, she told him that they "could discuss any personal issues that he had with the territory lines after the meeting." (Tr. 4). Pierce testified that Cornner "stormed out" without responding and proceeded to the restroom, where he remained for approximately forty-five minutes. (Tr. 4). She testified that she had lingered in the sales department until Pierce returned to his work area because she "knew [she] needed to talk to him privately." (Tr. 25).

Pierce testified that within approximately five minutes of Cornner returning to his work area, she again "asked him to please return to [her] office so [they] could clean up the issue." (Tr. 5). Pierce testified that Cornner responded, "No," before leaving for his sales route. (Tr. 5). She testified further that at approximately 5:00 p.m., she left Cornner a voicemail message asking him to call her so that they could discuss the matter before he returned to the office the next day. Pierce testified that Cornner never returned her call. She testified further that it is widely-known in the sales office that she can be reached on her office or cell phone until approximately 7:00 p.m. each day, and that Cornner had her contact information.

In his testimony, Cornner initially testified that he "didn't have any" message from Pierce on August 12, 2008, but subsequently revised his testimony to say that Pierce had, in fact, left a message on his personal cell phone asking him to call her, and that he had decided against returning her call. (Tr. 20).

Based upon the foregoing, we conclude that the evidence is sufficient to support the findings of fact, and that the findings support the Board's determination that Cornner

was discharged for just cause. *See McClain*, 693 N.E.2d at 1317. Moreover, Cornner asks that we reweigh the evidence or reassess the credibility of the witnesses, which we cannot do. *See Quakenbush*, 891 N.E.2d at 1053.

2. Additional Evidence

Cornner argues that the Board erred in denying his request to submit additional evidence, namely, telephone records that allegedly refute Pierce's testimony that she left him a voicemail message on August 12, 2003. We disagree.

Indiana Administrative Code title 646, section 3-12-8(b) provides, in pertinent part, as follows:

> Each hearing before the review board shall be confined to the evidence submitted before the administrative law judge unless it is an original hearing. Provided, however, the review board may hear or procure additional evidence upon its own motion, or upon written application of either party, and for good cause shown, together with a showing of good reason why such additional evidence was not procured and introduced at the hearing before the administrative law judge.

Thus, the Review Board, in its discretion, may "deny a request for a further hearing based on allegedly new evidence if the applicant fails to present a good reason for the failure to present the evidence at the original hearing." *McHugh v. Review Bd. of Workplace Dev.*, 842 N.E.2d 436, 440 (Ind. Ct. App. 2006). Such is the case here.

Cornner has not satisfied his burden. First, his "additional evidence" is not dispositive, given that his termination for insubordination did not stem solely from his failure to return Pierce's telephone call, but rather from his walking out of a sales meeting and his persistent refusals to discuss the matter privately as Pierce requested on several

occasions. Moreover, his "additional evidence" directly contradicts his testimony at the December 31, 2008 hearing, wherein he testified that Pierce had, in fact, left a voicemail message on his cell phone; and that he received the and deliberately disregarded the message. Lastly, Cornner offered no explanation as to the reason for his failure to procure and present the evidence at the hearing before the ALJ.

Based upon the foregoing, we conclude that Cornner's request to submit additional evidence was properly denied because he failed to present a good reason for his failure to present the telephone records at the December 31, 2008 hearing. *See McHugh*, 842 N.E.2d at 440.

Affirmed.

MAY, J., and KIRSCH, J., concur.