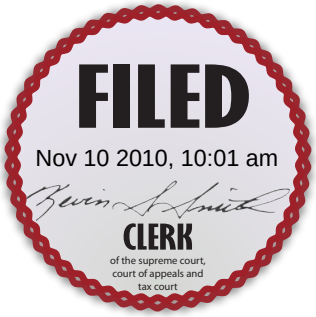

ATTORNEY FOR APPELLANT:

TAE STURE
Sture Legal Services
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

STEPHANIE ROTHENBERG
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

R.B,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 93A02-1005-EX-589
	)	
REVIEW BOARD OF THE INDIANA DEPARTEMENT OF WORKFORCE DEVELOPMENT and A.B.S.S., LLC	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOMENT
Cause No. 10-R-00926

November 10, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

R.B. appeals the order of the Unemployment Insurance Review Board ("Review Board") denying his claim for unemployment benefits. He raises three issues, which we restate as two: whether R.B. sufficiently medically substantiated a disability, and whether R.B. sufficiently advised his employer of his disability and limitations with the purpose of seeking a reasonable accommodation. Concluding in the affirmative as to both issues, we reverse and remand.

Facts and Procedural History

R.B. was employed by A.B.S.S., LLC as a security guard assigned to several branches of Fifth Third Bank ("FTB"). His duties required him to stand for about four hours per day. In February 2009, he was terminated from FTB but not A.B.S.S. for insubordination of an FTB official. A.L., an A.B.S.S. account manager for FTB, knew R.B. since R.B. began his job assignment at FTB in May 2006, and knew that R.B. limped when he walked and went to numerous related doctor's appointments. After R.B. was terminated from FTB, A.B.S.S. reassigned him to a FedEx warehouse, which required that he stand and walk for his entire shift of six to seven hours.

R.B. performed his duties at FedEx for his first day, but one of his ankles had severe swelling and he limped when he walked. At the end of his first day he telephoned R.U., an A.B.S.S. account manager for FedEx, and informed him he could not continue with his FedEx job assignment because of the length of time he was required to stand and walk. R.B. did not provide nor did R.U. ask him for medical documentation that he had a physical disability or that he could not physically perform the FedEx job assignment.

According to R.B., R.U. "wasn't too concerned." Transcript at 9. R.B. testified, "I tried to explain to him, and he just he says [sic] you're quitting." Id. R.B. also met R.U. in person, where R.U. could have observed R.B. limp when he walked.

Subsequently, R.B. made several calls to A.B.S.S. seeking another job assignment and left messages for R.U. and A.L. Although neither A.L. nor R.U., nor any other A.B.S.S. employee, responded to these calls, R.B. did not resign and A.B.S.S. did not terminate him. A.L. discussed with R.U. the prospect of R.B. seeking a job assignment from an A.B.S.S. downtown office, but A.L. did not discuss this prospect with R.B. and the record is unclear as to whether R.U. did. The downtown office did not receive nor initiate contact with R.B.

A deputy commissioner denied R.B.'s claim for unemployment benefits and R.B. appealed. In September 2009 and February 2010 an Administrative Law Judge ("ALJ") held hearings on R.B.'s appeal. The ALJ entered findings of fact and conclusions of law, and affirmed the deputy's denial of R.B.'s benefits. In part, the ALJ concluded as a matter of law that R.B. "did not present any doctor's statement to the employer" and his "unemployment is not the result of a medically substantiated physical disability." Appellant's Appendix at 3.

The Review Board adopted and incorporated by reference the ALJ's findings of fact and conclusions of law and affirmed the decision of the ALJ. R.B. now appeals.

Discussion and Decision

I. Standard of Review

A decision by the Review Board is "conclusive and binding as to all questions of fact," but may "be challenged as contrary to law, in which case [we will] examine[] the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of facts." Quackenbush v. Review Bd. of Ind. Dep't of Workforce Dev., 891 N.E.2d 1051, 1053 (Ind. Ct. App. 2008); see Ind. Code § 22-4-17-12(a) & (f). We review questions of law de novo. Penny v. Review Bd. of Ind. Dep't of Workforce Dev., 852 N.E.2d 954, 957 (Ind. Ct. App. 2006), trans. denied. To determine "whether the decision is reasonable in light of its findings," "we neither reweigh the evidence nor assess witness credibility, and we consider only the evidence most favorable to the Review Board's findings." Quackenbush, 891 N.E.2d at 1053.

II. Unemployment Resulting from Physical Disability

An individual is generally disqualified from receiving unemployment benefits if he voluntarily leaves his employment "without good cause in connection with the work." Indianapolis Osteopathic Hosp., Inc. v. Jones, 669 N.E.2d 431, 434 (Ind. Ct. App. 1996); Ind. Code § 22-4-15-1(a). But an exception provides that "[a]n individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation." Ind. Code § 22-4-15-1(c)(2).

Contrary to the ALJ's legal conclusion, R.B. and the Review Board agree that this exception generally does not require a doctor's verification of a disability nor a doctor's request for an accommodation. The ALJ's legal conclusion that a physician's verification of a physical disability is required for this exception is contrary to law. Goldman v. Review Bd. of Ind. Emp't Sec. Div., 440 N.E.2d 734, 735 (Ind. Ct. App. 1982). We also recognize, however, that "by not providing a physician's statement an employee exposes himself to the risk of his employer misunderstanding his problem and limitations or the risk of inadequately or inaccurately communicating them to the employer." Id. at 736.

Because the Review Board committed legal error, we examine the sufficiency of the facts found to sustain the Review Board's decision and the sufficiency of the evidence to sustain the facts. See Quackenbush, 891 N.E.2d at 1053. In particular, we examine whether R.B. adequately "medically substantiate[d] the termination of his employment [wa]s the result of physical disability," and whether R.B. made reasonable efforts to maintain his employment "by sufficiently advising his employer of his disability and the accompanying limitations with the purpose of seeking reasonable alternate work assignments." Goldman, 440 N.E.2d at 736.

The record shows that A.L. knew of R.B.'s doctor's appointments related to his limping and R.B. "tried to explain" his disability to R.U. who either cut off R.B.'s explanation or did not care to understand why R.B. could not perform the FedEx assignment. Both A.L. and R.U. knew that R.B. had a bad ankle and could not stand and walk for six to seven or more hours. The ALJ found that R.B. told A.B.S.S. "that he had

a bad ankle," and that "he would not be able to perform the duties because he would have to be on his feet." Appellant's App. at 3. The ALJ additionally found that R.B. walked with a limp and "attempted to call [R.U.] for another job assignment." Id. Therefore, as a matter of law, R.B. sufficiently medically substantiated that his disability led to his unemployment because A.B.S.S. – through A.L. and R.U. – knew that R.B. physically could not stand and walk for six or more hours without ceasing, and on an ongoing basis sought medical treatment for his ankle.

As a matter of law, R.B. also sufficiently advised his employer of his disability and limitations with the purpose of seeking a reasonable accommodation. A.B.S.S. knew of his disability; R.B.'s limitation was clearly somewhere between R.B.'s standing for four hours per day at FTB and six or more hours per day at FedEx; R.B. telephoned A.B.S.S. several times for alternate work assignments; and A.L. and R.U. even discussed an alternate work assignment for R.B. The failure by A.L. and R.U. to return R.B.'s telephone calls regarding an alternate work assignment does not allay A.B.S.S.'s knowledge and understanding. For R.B., a physician's verification was unnecessary because he adequately communicated his disability to A.B.S.S., which understood his problem and limitations.

Conclusion

As a matter of law, R.B. medically substantiated that his disability led to his unemployment and advised his employer of his disability and limitations with the purpose of seeking a reasonable accommodation. Therefore, we reverse the Review

Board's decision and remand to the Review Board for proceedings consistent with this opinion, in particular, to determine R.B.'s unemployment benefits.

Reversed and remanded.

MAY, J., and VAIDIK, J., concur.