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IN THE COURT OF APPEALS OF INDIANA

J.D.S.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-1006-EX-698
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and M.H.,	)	
	)	
Appellees.	)	

APPEAL FROM REVIEW BOARD OF THE
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 10-R-02426

November 24, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

J.D.S. appeals the decision of the Review Board of the Indiana Department of Workforce Development ("Review Board") in favor of M.H. on M.H.'s claim for unemployment benefits. J.D.S. raises a single issue for our review, namely, whether the Review Board erred when it concluded that M.H. was not terminated for just cause.

We affirm.

FACTS AND PROCEDURAL HISTORY

The Administrative Law Judge ("ALJ") who presided over M.H.'s appeal from the denial of his claim for unemployment insurance benefits stated the facts as follows:

> The claimant worked for this employer from December 19, 2008[,] until December 16, 2009[,] as production sales manager. This was a full time position and the claimant earned $25,000.00 per year plus commission. The claimant was discharged from his job for violating his action plan. The employer had placed the claimant on a number of action plans due to what they perceived was inadequate sales. The employer felt that the claimant was spending time on the internet which was taking away from his ability to make cold calls. In the last action plan the claimant was told that he had to leave the office at 8:15 until 3:15 Tuesday through Friday to make sales calls. On the first day the plan was in effect the claimant had not left the office by 9:15. The claimant's duties include office duties. Part of those duties would have been preparing materials that had been received. The claimant also had a responsibility to prepare sales documents for approval. On the last day the claimant was not able to leave because material came that required his attention. The claimant had employees that he could direct to do the task but they could not complete all of the work by themselves. The claimant was also completing a quote. The claimant spoke to Ms. [T.S., Vice President of Operations for J.D.S.,] on the last day regarding what he was doing and felt that the employer knew that he would not be leaving at 8:15. The claimant did not feel that his internet use prevented him from making sales calls. The claimant was on the internet during his break time and lunch time. The claimant improved sales after a June work improvement plan was put in place. The claimant states that there was more than one month starting in August where sales were above expectations.

Appellant's App. at 55.

After his termination from employment, M.H. applied for unemployment benefits, but his claim was denied. M.H. timely appealed, and the ALJ concluded that J.D.S. had not terminated M.H. for just cause and that M.H. was entitled to benefits. J.D.S. appealed the ALJ's decision to the Review Board, which adopted the ALJ's decision. This appeal ensued.

DISCUSSION AND DECISION

In Stanrail Corp. v. Review Board of the Department of Workforce Development, 735 N.E.2d 1197, 1201-02 (Ind. Ct. App. 2000), trans. denied, this court set out the applicable standard of review:

> The Indiana Unemployment Compensation Act[] provides that "[a]ny decision of the review board shall be conclusive and binding as to all questions of fact." Ind. Code § 22-4-17-12(a). 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 to sustain the findings of facts." Ind. Code § 22-4-17-12(f). Under this standard, we are called upon to 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. McClain v. Review Bd. of the Ind. Dep't of Workforce Dev., 693 N.E.2d 1314, 1317 (Ind. 1998).
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> Review of the Board's findings of basic fact is subject to a "substantial evidence" standard of review. Id. In this analysis, we neither reweigh the evidence nor assess the credibility of witnesses and consider only the evidence most favorable to the Board's findings. General Motors Corp. v. Review Bd. of the Ind. Dep't of Workforce Dev., 671 N.E.2d 493, 496 (Ind. Ct. App. 1996). We will reverse the decision only if there is no substantial evidence to support the Board's findings. KBI, Inc. v. Review Bd. of the Ind. Dep't of Workforce Dev., 656 N.E.2d 842, 846 (Ind. Ct. App. 1995).
>
> The Board's determinations of ultimate facts involve an inference or deduction based upon the findings of basic fact and is typically reviewed to

> ensure that the Board's inference is reasonable. McClain, 693 N.E.2d at 1317-18. We examine the logic of the inference drawn and impose any applicable rule of law. Id. at 1318. Some questions of ultimate fact are within the special competence of the Board, and it is therefore appropriate for us to accord greater deference to the reasonableness of the Board's conclusion. Id. However, as to ultimate facts which are not within the Board's area of expertise, we are more likely to exercise our own judgment. Id.
>
> Finally, we review conclusions of law to determine whether the Board correctly interpreted and applied the law. Parkison v. James River Corp., 659 N.E.2d 690, 692 (Ind. Ct. App. 1996). In sum, basic facts are reviewed for substantial evidence, conclusions of law are reviewed for their correctness, and ultimate facts are reviewed to determine whether the Board's finding is a reasonable one. McClain, 693 N.E.2d at 1318. The amount of deference given to the Board turns on whether the issue is one within the particular expertise of the Board. Id.

In Indiana, an unemployed claimant is ineligible for unemployment benefits if he is discharged for "just cause." See Russell v. Review Bd. of Indiana Dep't of Employment and Training Servs., 586 N.E.2d 942, 948 (Ind. Ct. App. 1992). Here, J.D.S. contends that it terminated M.H.'s employment for just cause and that the Review Board erred when it concluded otherwise. In essence, J.D.S. challenges the sufficiency of the evidence to support the Review Board's decision.

J.D.S. bore the burden to prove that M.H.'s discharge was for just cause. See id. On appeal, J.D.S. maintains that the sole issue is whether M.H. knowingly violated the "corrective action plan" that J.D.S. had implemented. The Review Board concluded that

> The employer has not established that the claimant knowingly violated the [corrective action plan] on the last day. The [corrective action plan] was put into place so the claimant would not be wasting time in unproductive pursuits at work. The evidence supports that the claimant was engaged in work activities that were to the employer's benefit by completing a quote prior to leaving and helping with materials that had arrived. The employer has not met its burden of proof in this case.

Appellant's App. at 56.

We hold that there is substantial evidence supporting the Review Board's findings and conclusions and that the Review Board's decision was reasonable. On appeal, J.D.S.'s entire argument consists of the following:

> M.H. signed the Plan two (2) days before he was discharged. M.H. acknowledged in the record that he was familiar with the terms of the Plan. The fact that M.H. elected not to leave the office by 8:15 a.m. because he felt it was in the best interest of Appellant is irrelevant. His mere presence at the office violated the Plan. M.H. knowingly violated the Plan and J.D.S. has met its burden of proof to show that he knowingly violated the Plan and that J.D.S. had just cause to terminate him.

Brief of Appellant at 4 (emphasis added).[1]

Just cause includes discharge for a knowing violation of a reasonable and uniformly enforced rule of an employer. Ind. Code § 22-4-15-1(d)(2). To have knowingly violated an employer's rule, the employee must know of the rule and must know that his conduct violated the rule. Stanrail Corp., 735 N.E.2d at 1203. The Board must make a finding as to whether an employee knew that his conduct violated an employer rule because the text of Indiana Code Section 22-4-15-1(d)(2) requires a "knowing violation" of a rule rather than merely a violation of a known rule. Id.

An employer's asserted work rule must be reduced to writing and introduced into evidence to enable this court to fairly and reasonably review the determination that an employee was discharged for just cause for the knowing violation of a rule. Id. at 1205. Here, the corrective action plan J.D.S. implemented for M.H. on December 14, 2009,

[1] The Review Board contends that J.D.S. has waived its appeal for failure to present cogent argument. Indeed, J.D.S.'s argument section is very short and does not include citations to the record or case law, other than to set out the standard of review. See Ind. Appellate Rule 46(A)(8)(a). Despite these significant deficiencies, we exercise our discretion to address J.D.S.'s appeal on the merits.

stated in relevant part: "[M.H.] will spend time from 8:15 am to 3 pm Tuesday through Friday out of the office." Appellant's App. at 45. J.D.S. asks that we uphold a strict interpretation of the rule that M.H. leave the office between the designated hours. J.D.S. maintains that because M.H. was present in the office as late as 9:15 on a Tuesday when he knew that he was supposed to have left at 8:15, M.H. knowingly violated the rule.

But the ALJ found in relevant part as follows:

> On the last day [that M.H. was employed by J.D.S.] the claimant was not able to leave [by 8:15 a.m.] because material came that required his attention. The claimant had employees that he could direct to do the task but they could not complete all of the work by themselves. The claimant was also completing a quote. The claimant spoke to Ms. T.S. on the last day regarding what he was doing and felt that the employer knew that he would not be leaving at 8:15.

Appellant's App. at 55. And the ALJ concluded, and the Review Board agreed, that because M.H. was engaged in work directly benefiting J.D.S. at the time of the alleged violation, M.H. did not knowingly violate the corrective action plan as alleged. J.D.S.'s contention on appeal amounts to a request that we reweigh the evidence, which we cannot do. There is substantial evidence in the record to support the Review Board's decision that M.H. was not discharged for just cause and is entitled to unemployment benefits.

Affirmed.

BAKER, C.J., and MATHIAS, J., concur.