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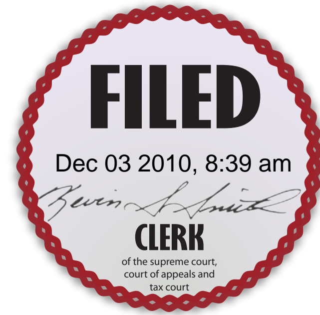

ATTORNEY FOR APPELLANT:

T.P.
Greenfield, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

PAMELA S. MORAN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

T.P., Appellant-Defendant, vs. REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and CENTRAL INDIANA COOLING & HEATING, INC., Appellee-Plaintiff.	))))))))))	No. 93A02-1003-EX-297

APPEAL FROM REVIEW BOARD OF INDIANA WORKFORCE DEVELOPMENT
Steven F. Bier, Chairperson, and George H. Baker and Larry A. Dailey, Members
No. 10-R-00296

December 3, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

T.P. was discharged by his employer, Central Indiana Cooling and Heating ("Employer") for walking off the job. The Review Board of the Indiana Department of Workforce Development (the "Board") affirmed the decision of the Administrative Law Judge ("ALJ"), which concluded that T.P. was ineligible for unemployment benefits because he was discharged for just cause. T.P. appeals and raises three issues, which we restate as:

> I. Whether the Board's finding that he was discharged for just cause was supported by substantial evidence;
>
> II. Whether the ALJ abused his discretion by admitting certain evidence; and
>
> III. Whether the Board abused its discretion by denying T.P.'s request to submit additional evidence.

We affirm.

Facts and Procedural History

The facts most favorable to the judgment are that T.P. was hired by Employer as an assistant to the installer and warehouse personnel, with his employment commencing on November 14, 2007. On June 11 and July 16, 2009, T.P. became upset while on the job and left work. On September 2, 2009, T.P. again left work after becoming agitated because he was having difficulties performing his job duties without assistance. T.P.'s employment was subsequently terminated.

T.P. applied for unemployment benefits, and on or about September 24, 2009, a claims deputy of the Indiana Department of Workforce Development determined that T.P. was ineligible for benefits because he had voluntarily left his employment without

good cause. T.P. appealed the deputy's determination, and an ALJ held a telephonic hearing on December 28 and 30, 2009. On the first day of the hearing, upon discovering that Employer had not provided T.P. with copies of its exhibits, the ALJ continued the hearing until December 30 in order to allow the documents to be exchanged.

The ALJ resumed the hearing on December 30 and learned that T.P. had not picked up the exhibits from Employer's place of business and that Employer had not mailed the exhibits to T.P. The ALJ stated that he was "inclined to issue another continuance" and have Employer's representative send the exhibits by certified mail. Tr. p. 13. However, T.P. stated that he wanted to proceed with the hearing and that he had no objection to the introduction of the exhibits. The ALJ then proceeded with the hearing and Employer's exhibits were admitted into evidence.

On December 31, 2009, the ALJ modified the decision of the claims deputy, concluding that T.P. was discharged for just cause for repeatedly walking off the job. T.P. appealed the ALJ's decision to the Board and requested that it consider additional evidence. The Board denied T.P.'s request to submit additional evidence and affirmed the ALJ's decision. In so doing, the Board adopted the ALJ's findings of fact and conclusions of law, with the following addendum:

> On appeal, [T.P] argues that he did not receive copies of the Employer's exhibit[s] prior to the Administrative Law Judge hearing. During the hearing, [T.P.] acknowledged that he did not have the Employer's proposed exhibits and waived any objection to the admission of the documents on that basis.

Appellant's App. p. 4. T.P. now appeals.

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) (2005). 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 fact." Ind. Code § 22-4-17-12(f) (2005); McHugh v. Review Bd. of the Ind. Dep't of Workforce Dev., 842 N.E.2d 436, 440 (Ind. Ct. App. 2006). Under this standard, we 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." McClain v. Review Bd. of the Ind. Dep't of Workforce Dev., 693 N.E.2d 1314, 1317 (Ind. 1998).

We review the Board's findings of basic fact under a "substantial evidence" standard. Id. In this analysis, we neither reweigh the evidence nor assess the credibility of witnesses, and we consider only the evidence most favorable to the Board's findings. Id. We will reverse only if there is no substantial evidence to support the findings or if a reasonable person, considering only the evidence supporting those findings, would be bound to reach a different result. 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 conclusions as to ultimate facts involve an inference or deduction based upon the findings of basic fact, and they are reviewed to ensure that the Board's

inference is reasonable. McClain, 693 N.E.2d at 1317-18. Finally, we review conclusions of law to determine whether the Board correctly interpreted and applied the law. McHugh, 842 N.E.2d at 440.

I. Substantial Evidence

T.P. first argues that the Board's finding that he was discharged for just cause was not supported by substantial evidence. Pursuant to Indiana Code section 22-4-15-1 (2005), an unemployed claimant is ineligible for unemployment benefits if he is discharged for "just cause." See also McHugh, 842 N.E.2d at 440; Stanrail Corp. v. Review Bd. of the Ind. Dep't of Workforce Dev., 735 N.E.2d 1197, 1202 (Ind. Ct. App. 2000), trans. denied. Whether an employer had just cause to discharge an unemployment claimant is a question of fact for the Board. Gibson v. Review Bd. of the Ind. Dep't of Workforce Dev., 671 N.E.2d 933, 935 (Ind. Ct. App. 1996).

T.P. does not dispute that walking off the job amounts to just cause for discharge. Rather, he challenges the ALJ's and the Board's findings that he repeatedly walked off the job and that the alleged walk-offs were the reason for his discharge. Specifically, T.P. claims that he did not walk off the job on June 11 or July 16, 2009. T.P. admits that he left work on September 2, 2009, but claims that he was justified in doing so because his supervisor, Larry Stone ("Stone"), told him to shut up and T.P. was attempting to avoid a confrontation. T.P. further alleges that his employment was terminated not because he walked off the job, but because he suffers from a medical condition that caused him to miss work.

T.P.'s argument is simply an invitation to reweigh the evidence and judge the credibility of witnesses, which we will not do. Stone testified that T.P. walked off the job on June 11, July 16, and September 2, 2009, and that these repeated, unexcused absences from work were the reason for T.P.'s discharge. Stone testified further that he did not tell T.P. to shut up on September 2, 2009, and that T.P. left after becoming angry because he was having difficulty performing his job duties without Stone's assistance. The Board and the ALJ clearly found Stone's testimony to be credible, and we will not second guess this determination on appeal. The Board's findings were supported by substantial evidence.

II. Admission of Employer's Exhibits

Next, T.P. argues that the ALJ abused his discretion by admitting Employer's exhibits. See Shoup v. Review Bd. of Indiana Emp't Sec. Div., 399 N.E.2d 771, 774 (Ind. Ct. App. 1980) (admission and exclusion of evidence is within the sound discretion of the ALJ). Specifically, he argues that the exhibits should not have been admitted because Employer did not provide T.P. with copies of the exhibits prior to the hearing. However, T.P. explicitly agreed to the admission of the exhibits and waived any objection based on Employer's failure to disclose them prior to the hearing. He has therefore waived judicial review of this issue. See Ind. Code § 4-21.5-5.10 (2009) (issues not raised before the ALJ are waived for judicial review except in limited circumstances not relevant here); Highland Town Sch. Corp. v. Review Bd. of the Ind. Dep't of

Workforce Dev., 892 N.E.2d 652, 656 (Ind. Ct. App. 2008) (unemployment claimant waived judicial review of issue by failing to make a proper objection before the ALJ).

On appeal, T.P. contends that he agreed to the admission of Employer's exhibits "assuming that [he] would be able to prove [his] case through an appeal if the judgment was not in [his] favor." Appellant's Br. at 12. Unfortunately for T.P., this assumption was incorrect. While we recognize that T.P. was unrepresented by counsel during the hearing, we note that "one who proceeds pro se is 'held to the same established rules of procedure that a trained legal counsel is bound to follow' and, therefore, must be prepared to accept the consequences of his or her action." Ramsey v. Review Bd. of the Ind. Dep't of Workforce Dev., 789 N.E.2d 486, 487 (Ind. Ct. App. 2003)

T.P. also claims that Employer's exhibits were falsified, but again, he made no objection on this basis during the hearing. We acknowledge that T.P. would not have been aware of any alleged falsification of the exhibits at the time of the hearing because he had not yet seen them; however, T.P. voluntarily chose to go forward with the hearing without viewing the documents, and he cannot now avoid the consequences of that choice. See id. T.P. has therefore waived judicial review of this issue.

III. Request to Submit Additional Evidence

Finally, T.P. contends that the Board erred when it denied his request to submit additional evidence. The admission of evidence additional to that heard by the ALJ is within the Review Board's discretion. Ritcheson-Dick v. Unemployment Ins. Review Bd., 881 N.E.2d 54, 56 (Ind. Ct. App. 2008). We review the Board's decision for an

abuse of discretion, which occurs if the decision is arbitrary or capricious as revealed by the uncontradicted facts. Fruehauf Corp. v. Review Bd. of the Ind. Emp't Sec. Div., 448 N.E.2d 1193, 1197 (Ind. Ct. App. 1983).

The issue is governed by Indiana Administrative Code title 646, section 3-12-8(b), which provides, in pertinent part:

> 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 Board has discretion to 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, 842 N.E.2d at 442.

In a letter to the Review Board dated January 17, 2010, T.P. requested that the Board consider additional evidence, but the only explanation he provided for his failure to present the evidence at the hearing was Employer's failure to provide T.P. with copies of its exhibits prior to the hearing. However, as noted above, T.P. willingly chose to go forward with the hearing without viewing the exhibits, and this choice does not amount to good cause for failing to present his own evidence at the ALJ hearing. The Board did not abuse its discretion by denying T.P.'s request to submit additional evidence.

Conclusion

The Board's finding that T.P. was discharged for just cause was supported by substantial evidence. The ALJ did not abuse his discretion by admitting Employer's exhibits. The Board did not abuse its discretion by denying T.P.'s request to submit additional evidence.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.