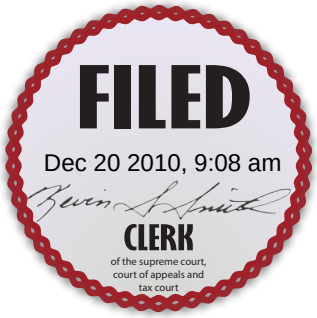

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IN THE COURT OF APPEALS OF INDIANA

A.Q.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-1004-EX-405
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT, et al.,	)	
	)	
Appellees.	)	

APPEAL FROM THE REVIEW BOARD OF WORKFORCE DEVELOPMENT
The Honorable Steven F. Bier, Chairperson, The Honorable George H. Baker, Member
And The Honorable Larry A. Dailey, Member
Cause No. 10-R-399

December 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

A.Q. ("Claimant") brings this pro se appeal of the decision by the Review Board of the Indiana Department of Workforce Development ("the Board") not to reinstate his appeal from the determination that he was ineligible for unemployment insurance benefits.

We affirm.

ISSUES

1. Whether the Board's decision must be reversed because Claimant was not advised that he had the right to counsel.

2. Whether the Board's decision must be reversed because Claimant was not advised as to the issue in his request for reinstatement.

FACTS

On June 9, 2009, an Indiana Department of Workforce Development ("IDWD") claims deputy issued an eligibility determination finding that Claimant was "ineligible for [unemployment insurance] benefits" because he had "voluntarily left employment without good cause in connection with the work" by having "voluntarily retired." (Supp. App. 6). The determination document stated that the decision would "become final on

06/19/2009 if not appealed," which Claimant could do by filing an appeal and requesting a hearing "within ten days"; and provided instructions in that regard. *Id.*

On June 17, 2009, IDWD received Claimant's written request "to file an appeal." *Id.* at 7. That same day, IDWD acknowledged his request for a hearing and "notified" him that a "TELEPHONE HEARING" was scheduled for Tuesday, December 1, 2009, at 1:00 p.m., and that he must "submit a telephone number for the hearing" as "THE ALJ CALLS ALL PARTIES." *Id.* at 8. The notice directed Claimant to "READ CAREFULLY THE ATTACHED INSTRUCTIONS," which included the following:

> . . . . For telephone hearings, the judge will call you at the ONE contact number you provide. Hearings may proceed in the absence of either or both of the parties. . . . .
>
> . . . . Parties may request a change in their hearing date/time, . . . by making a written request to the judge . . . . The judge must receive the request at least three (3) days prior to the hearing. You should explain the reason for your request.
>
> . . . . Parties may be represented at the hearing. . . . . Claimants may be represented by an attorney, ...
>
> . . . . Provide the judge with ONE contact telephone number [on the form on] Page 2 of the Notice of hearing.

Id. at 10. Claimant returned the appeal acknowledgment form, stating therein that he would "participate in the hearing" and providing his telephone number. *Id.* at 27.

On December 1, 2009, according to the docket notes of the Administrative Law Judge ("ALJ"), the ALJ made "2 attempts to reach" Claimant at the number he provided, but Claimant "was not available." *Id.* at 16. On December 2, 2009, notice was sent to Claimant that the ALJ dismissed his appeal because "[t]he party who requested the

appeal failed to participate in the appeal hearing." *Id.* at 19. The notice advised Claimant that he could "file[] a written request for reinstatement" of his appeal, within seven days, and that the "[r]equest for reinstatement must show good cause why the appeal should be reinstated." *Id.*

On December 8, 2009, Claimant wrote to IDWD "to request an appeal for reinstatement." *Id.* at 20. His letter stated Claimant's belief that he "was . . . eligible for unemployment benefits," *id.* at 24, but provided no reason for his unavailability at the time scheduled for his December 1st telephone hearing.

On January 6, 2010, the director of Unemployment Insurance Appeals sent Claimant a notice that his request for reinstatement of his appeal had been denied. The notice stated that Claimant's appeal had been dismissed by the ALJ "because the Claimant, the party requesting the hearing, did not appear," and Claimant's appeal "for reinstatement" had "not show[n] good cause why the case should be reinstated." *Id.* at 26.

On January 22, 2010, Claimant requested an appeal to the Board. He again explained why he believed he "was eligible to receive unemployment benefits." *Id.* at 28.

On January 25, 2010, the Board issued its decision. It noted that Claimant's "request for reinstatement" of the appeal to the denial of his eligibility "failed to provide any explanation regarding why he failed to participate in the Administrative Law Judge's hearing." *Id.* at 29. The decision noted that in his appeal to the Board, Claimant "still ha[d] not offered an explanation as to why he failed to participate in the Administrative Law Judge hearing," and it found that "Claimant did not have good cause for failing to

participate in the Administrative Law Judge hearing." *Id.* Accordingly, it affirmed the denial of his request for reinstatement of his appeal.

DECISION

Claimant's arguments all concern whether he was given the notice required by due process. The touchstone for such a question was declared in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950): the "elementary and fundamental requirement of due process . . . is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 314. "The notice must be of such nature as reasonably to convey the required information." *Id.*

Claimant first argues that he was "not advised of his right to counsel and . . . was prejudiced" by having been so advised. Claimant's Br. at 1. He cites to *Sandlin v. Review Bd. of Ind. Employment Sec. Div.*, 406 N.E.2d 328 (Ind. Ct. App. 1980), wherein we held that "[d]ue process . . . requires the claimant be entitled to appear by counsel during the administrative hearing" on an appeal of an administrative action, and that "the claimant be advised of his right to be represented by counsel." *Id.* at 331, 333.

Claimant's argument, however, is not sustained by the record. The written "U.I. Appeals Hearing Instructions" clearly provided that "Claimants may be represented at the hearing" and "may be represented by an attorney." (Claimant's App. 5; Supp. App. 10). Thus, he was given notice of "the required information" in that regard. *Mullane*, 339 U.S. at 314.

Claimant next argues that he was "not notified nor was it apparent that the issue that the Administrative Law Judge and the Review Board would be considering was [Claimant]'s reason for not being available at the telephone hearing." Claimant's Br. at 1. The notice of eligibility determination clearly stated that the claims deputy had concluded that Claimant was not eligible for benefits because he "voluntarily left employment . . . ." (Supp. App. 6). Hence, such would be the issue challenged in an appeal of that determination, and the notice of the hearing on his appeal before the ALJ stated that the issue was "[w]hether the claimant voluntarily left the employment without good cause in connection with the work." *Id.* at 8.

When Claimant was not available for the scheduled telephone hearing on his appeal, however, it was dismissed. The notice of the dismissal stated that Claimant "failed to participate in the hearing," and the ALJ "therefore dismissed the appeal." *Id.* at 14. To appeal the ALJ's dismissal, the notice advised that Claimant must "file[] a written request for reinstatement" and "show good cause why the appeal should be reinstated." *Id.* We find that this notice "reasonably . . . convey[ed]" to Claimant the required information that he had to submit. *Mullane*, 309 U.S. at 314. Specifically, it reasonably conveyed that because his appeal had been dismissed for his failure to participate in the hearing, Claimant's appeal of the dismissal must "show good cause" why he had not participated in the hearing. (Supp. App. 19).

The Board found that Claimant had never provided any explanation to IDWD "as to why he failed to participate in the Administrative Law Judge hearing." (Supp. App. 29). An "explicit" statutory provision states that "[a]ny decision of the review board

shall be conclusive and binding as to all questions of fact." *McClain v. Review Bd. of Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1317, 1316 (Ind. 1998) (quoting Ind. Code § 22-4-17-12(a)). Moreover, our review of the Board's findings of basic, underlying facts is the "'substantial evidence' standard of review." *Id.* at 1317. The record on review clearly establishes that Claimant never provided to IDWD a showing of good cause as to his failure to participate in the appeal hearing with the ALJ. Hence, the substantial evidence standard was met.

It is unfortunate that Claimant failed to understand the information provided by the IDWD. However, the notice setting the hearing time and date of his appeal and attached instructions clearly informed him of his right to seek counsel. Claimant chose to proceed pro se, and it is undisputed that he was not available for the scheduled telephone appeal hearing with the ALJ. Pro se litigants without legal training are held to the same standard as trained counsel and are required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Claimant has failed to establish that the Board erred when it affirmed the denial of his request for reinstatement of his appeal from the determination that he was not eligible for unemployment insurance benefits.

Affirmed.

NAJAM, J., and BAILEY, J., concur.