

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

K.B.,
Appellant-Petitioner,

v.

Review Board of the Indiana
Department of Workforce
Development, et al.,
Appellee-Respondents

November 29, 2023

Court of Appeals Case No.
22A-EX-2763

Appeal from the Review Board of
the Department of Workplace
Development

Gabriel Paul, Chairman
Larry A. Dailey, Member
Heather D. Cummings, Member

No. 22-R-4862

Memorandum Decision by Judge May
Judges Bailey and Felix concur.

May, Judge.

[1] K.B. appeals the decision of the Review Board of the Indiana Department of Workforce Development (“Review Board”), which affirmed the denial of her request for unemployment benefits. We affirm.

Facts and Procedural History

[2] On April 12, 2022, K.B. was terminated from her employment as an art teacher for Employer and filed for unemployment benefits. On May 9, 2022, a claims investigator with the Department of Workforce Development determined K.B. was discharged for cause because she violated a number of Employer’s policies. The claims investigator therefore denied her request for unemployment benefits.

[3] On May 10, 2022, K.B. filed an appeal of the claims investigator’s decision. The parties were scheduled to have a hearing before an Administrative Law Judge (“ALJ”) on June 7, 2022, but the ALJ was unavailable that day, so the parties agreed to continue the hearing to June 20, 2022. At the June 20 hearing, the ALJ continued the hearing sua sponte because he discovered the hearing notice did not include Employer’s attorney’s address and the date on the notice provided to Employer indicated the wrong date for the rescheduled hearing.

[4] After several other continuances, the ALJ held a hearing on the matter on September 16, 2022. At the hearing, K.B. and Employer appeared in person. Both parties testified and together tendered a combined total of fifty exhibits, including all of K.B.’s disciplinary notices with the relevant school policies attached. On September 21, 2022, the ALJ made several findings regarding

incidents in which K.B. violated Employer’s policies, including leaving students unattended, taking a student’s cell phone, and secluding a disruptive student. Further, the ALJ found K.B. displayed one piece of student artwork depicting “blackface” and another in which the subject was smoking. (Ex. Vol. I at 187.) Based thereon, the ALJ determined K.B. was not entitled to unemployment benefits because Employer discharged her for cause.

[5] On September 23, 2022, K.B. filed an appeal of the ALJ’s decision with the Review Board. The Review Board did not hold a hearing or receive additional evidence. On October 6, 2022, the Review Board issued an “Order of Temporary Remand” noting the ALJ “failed to properly maintain the record on appeal by failing to attach all admitted exhibits[.]” (App. Vol. II at 6.) The Review Board ordered the ALJ to “attach all admitted exhibits to the Exhibit List, including Claimant Exhibit C, to preserve the record on appeal.” (*Id.*) The ALJ complied with that order and then, on October 21, 2022, the Review Board affirmed the ALJ’s decision. The Review Board found, in relevant part:

On several occasions Claimant left students in her class unattended.

* * * * *

Claimant frequently allowed students to enter information into Employer’s software regarding their own discipline. . . . Claimant received a written warning and was placed on an improvement plan as a result of the incident. The warning alerted Claimant that “[n]on renewal of contract” was a possible consequence of future misconduct.

* * * * *

In December, 2020, Claimant placed a disruptive student in her class in the drying room. The student was by himself. The student was removed from the classroom as a punishment for failing to adhere to the COVID-19 protocols in effect at the time. The incident came to light due to a parent's complaint. Claimant received a written incident report on January 19, 2021. The report noted that Claimant was expected to comply with Employer's policies. Failure to meet expectations, the report noted, could result in discharge.

* * * * *

At least in the middle school, Employer's policy with respect to students with cell phones was that staff should "NOT TAKE A STUDENT'S CELL PHONE." The purpose of the policy was to avoid "conflict" or "disturbance" that might arise from taking the student's phone. In addition, the policy was meant to avoid the potential liability if a confiscated phone were lost.

[Principal Joshua] Goeringer learned that on [sic] December 2021, Claimant took a cell phone from a student and placed it in Claimant's office. When the phone went missing from Claimant's office, Claimant followed the student around school. Claimant received a written warning about the incident on January 12, 2022.

Also in December, 2021, a student submitted an art project to Claimant's class. The work was a "blackface" version of Patrick Starfish from the cartoon SpongeBob, including exaggerated lips and a gold chain. Claimant accepted the project and praised it. Employer maintained a policy barring discrimination "on the basis of race." This incident also came to light due to a parent's complaint.

Goeringer wrote an incident report regarding the incident on January 12, 2022. Claimant met with Goeringer about the incident at the time.

Also on January 12, 2022, Goeringer observed artwork in the hall of the school. The artwork depicted singer Kurt Cobain smoking a cigarette. Claimant approved the project to be hung in the hallway. Employer's policy prohibits tobacco use. An Employer's practice is to prohibit students from wearing clothing that depicts tobacco use.

Employer placed Claimant on administrative leave on January 14, 2022. With respect to a discharge decision of a teacher, Employer acts through its Board of Trustees. And with respect to the reasons for a discharge, Employer speaks officially through the Board of School Trustees after it engages in consideration of a proposed discharge. The Board of School Trustees discharged Claimant on April 12, 2022 for: (1) leaving students unsupervised; secluding a student; confiscating a student's cell phone; harassing that same student; and allowing the creation of the Patrick Starfish and Kurt Cobain artworks.

(Ex. Vol. I at 185-6) (citations to the record omitted). Based thereon, the Review Board concluded:

Here Claimant was discharged for just cause. Claimant was not discharged for just cause for violating a rule. Employer cited its policy regarding seclusion of students. Claimant did not violate that policy.

Claimant was discharged for just cause for breach of duty. Claimant was discharged because she repeatedly transgressed Employer's reasonable expectations. Claimant violated the seclusion policy. Claimant violated Goeringer's clear directive to

not take any student's cell phone. Claimant failed to supervise students repeatedly. In the case of the Patrick Starfish work, Claimant accepted and praised student academic work that was morally repugnant. In the case of the image of Kurt Cobain, Claimant accepted and displayed student academic work that encouraged behavior that was prohibited by Employer. As reflected by the fact that some of the incidents were discovered due to parent's complaints, Claimant's behavior negatively impacted Employer's reputation.

(*Id.* at 187.)¹

Discussion and Decision

[6] As an initial matter, we note K.B. proceeds pro se. A pro se litigant is not entitled to any special considerations because of the litigant's pro se status. *Kelley v. State*, 166 N.E.3d 936, 937 (Ind. Ct. App. 2021). Rather, we hold pro se litigants to the same legal standards as licensed attorneys. *Id.* "This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016), *reh'g denied*. "We will not become an advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood." *Id.* at 984 (internal quotation marks omitted).

¹ The Review Board adopted all but one sentence from the ALJ's findings and conclusions. The excluded sentence stated: "Violation of that policy did not uniformly lead to discharge since Claimant herself violated the policy yet continued to be employed for another year." (App. Vol. II at 4.)

[7] Pursuant to Indiana Code section 22-4-15-1(a), a person claiming unemployment benefits after termination from employment is disqualified from receiving those benefits if the claimant is discharged for just cause by the claimant's employer. The statute defines discharge for cause, in relevant part, as "any breach of duty in connection with work which is reasonably owed an employer by an employee." Ind. Code § 22-4-15-1(d)(9). Under 646 Indiana Administrative Code 5-8-6:

(a) In order to qualify as a breach of duty for unemployment insurance purposes, the duty must be:

- (1) reasonably connected to the work;
- (2) reasonably owed to the employer by the employee; and
- (3) of such a nature that a reasonable employee would recognize a violation of the duty, and would understand that such a violation of the duty would subject the individual to discharge.

[8] On appeal from a decision of the Review Board, we "utilize a two-part inquiry into the sufficiency of the facts sustaining the decision and the sufficiency of the evidence sustaining the facts." *Whiteside v. Ind. Dep't of Workforce Development*, 873 N.E.2d 673, 674 (Ind. Ct. App. 2007).

In doing so, we consider determinations of basic underlying facts, conclusions or inferences from those facts, and conclusions of law. The Review Board's findings of fact are subject to a substantial evidence standard of review. "Any decision of the review board shall be conclusive and binding as to all questions

of fact.” I.C. § 22-4-17-12(a). We do not reweigh the evidence or assess the credibility of witnesses. Regarding the Board’s conclusions of law, we assess whether the Board correctly interpreted and applied the law.

Id. at 675 (some citations omitted). We will reverse “only if there is no substantial evidence to support the findings.” *KBI, Inc. v. Review Bd. of the Ind. Dep’t of Workforce Dev.*, 656 N.E.2d 842, 846 (Ind. Ct. App. 1995).

[9] Much of K.B.’s brief contains statements challenging the facts as found by the Review Board. As best as we can ascertain, K.B. contends the findings erroneously credited the Employer’s testimony “without substantial evidence and writing the defaming statements about the terminated employee.” (Br. of Appellant at 27.) She further asserts Employer falsified evidence, such as requiring a student to forge his grandmother’s signature, and that she “received fictitious write-ups and workplace harassment.” (*Id.* at 4.) She argues the “ALJ denied subpoenaed evidence yet wrote in his decision the artwork was morally repugnant. The Claimant has never seen the painting that ended her career.” (*Id.* at 29.) Finally, K.B. asserts the “ALJ did not consider, read, or study the documents admitted during the hearing. There was no logic behind the decisions.” (*Id.*)

[10] However, Employer presented several pieces of evidence to support the Review Board’s findings that K.B. was discharged for cause. Employer provided a copy of K.B.’s professional improvement plan, which included details of the incident during which K.B. placed a child in seclusion as punishment. (Ex. Vol. I at

131.) Employer presented into evidence a copy of an email wherein Principal Goeringer indicated the school's cell phone policy. (*Id.* at 135.) Following that email, the record contains a copy of the incident report in which K.B. took a student's cell phone in violation of that policy. (*Id.* at 137.) Employer also presented evidence of several instances during which K.B. left her class unattended. (*Id.* at 165.) Finally, Employer provided the incident reports describing the inappropriate artwork, including pictures of the artwork. (*Id.* at 147-49; 158-60.) To the extent K.B. contends the evidence does not support the Review Board's findings, her argument is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Whiteside*, 873 N.E.2d at 675 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

[11] Regarding whether the findings support the Review Board's conclusions, K.B. violated duties reasonably connected to work and reasonably owed to Employer - each incident report placed into evidence by Employer includes a copy of the portion of the school's policy manual violated by that incident. Further, the duty breached was of the nature that a reasonable employee would recognize the violation of the duty and understand she would be subject to discharge - as part of the communication after each incident, Principal Goeringer advised K.B. that continued incidents in violation of school policy could result in non-renewal of her contract. Thus, the Review Board's findings, which we determined above were supported by the evidence, support the Review Board's conclusion that K.B. was discharged for cause and thus

ineligible for unemployment benefits. *See, e.g., Hierlmeier v. North Judson-San Pierre Bd. of School Trustees*, 730 N.E.2d 821, 828 (Ind. Ct. App. 2000)

(substantial evidence supported conclusion that teacher was terminated for just cause based on teacher’s repeated violations of school policy).²

Conclusion

[12] As the evidence supported the Review Board’s findings and the Review Board’s findings supported its conclusions, the Review Board did not err when it affirmed the ALJ’s determination that K.B. was not entitled to unemployment benefits. Accordingly, we affirm the decision of the Review Board.

[13] Affirmed.

Bailey, J., and Felix, J., concur.

² K.B. claims she was denied due process because the “Employer did not attend the hearing failing to meet their responsibility to prove the termination was for just cause.” (Br. of Appellant at 29.) This contention seems to concern the June 20, 2022, hearing that the ALJ continued sua sponte because Employer’s counsel had not received proper notice of the hearing. K.B. also asserts, as best as we can ascertain, her due process rights were violated when she did not receive the exhibits for the ALJ hearing within forty-eight hours. Finally, K.B. argues her First Amendment rights to free speech were violated when the school did not allow her to permit a student to create art using grayscale and when she “was hushed after the meetings with the superintendent and the building principal.” (*Id.* at 7.) Indiana Appellate Rule 46(A)(8)(a) requires an appellate argument to be supported by cogent reasoning as well as citation to relevant authorities. K.B.’s arguments regarding due process and the First Amendment do not include citation to relevant case law and she does not explain how any of the identified incidents violated her rights. Therefore, her arguments are waived for failure to make a cogent argument. *See, e.g., In re Involuntary Termination of Parent-Child Relationship of B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to make a cogent argument waives issue from appellate consideration), *trans. denied*.