

MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

L.V.,
Appellant

v.

Review Board of the Indiana Department of Workforce
Development,
Appellee-Plaintiff



April 29, 2024

Court of Appeals Case No.
23A-EX-2254

Appeal from the Review Board of the Indiana Department of
Workforce Development

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

Trial Court Cause Nos.
23-R-2196
23-R-2197

23-R-2198
23-R-2199
23-R-2200
23-R-2201
23-R-2202
23-R-2203
23-R-2204

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

- [1] In this consolidated appeal, L.V., appearing pro-se, challenges nine decisions of the Review Board of the Indiana Department of Workforce Development (“Review Board”) affirming determinations of an Administrative Law Judge (“ALJ”). L.V. presents the sole issue of whether the Review Board erred in finding that L.V. received overpayments of unemployment benefits on nine occasions due to unreported deductible income. We affirm.

Facts and Procedural History

- [2] During April of 2020, L.V. accepted employment at Jewel-Osco d/b/a Grocery Works in Crown Point (“Grocery Works”), at a rate of \$16.00 per hour. Although L.V. anticipated working full-time, he was scheduled to work only twelve to twenty hours per week during the Covid-19 pandemic. L.V. applied

for and received Pandemic Emergency Unemployment Compensation in the amount of \$109.00 weekly.

[3] L.V. exclusively used his smartphone to apply for his weekly benefits. With this technology and the Workforce Development website, Uplink, L.V. was unable to report additional employer-provided income such as vacation pay. He spoke with a Workforce Development employee, who advised using a desktop computer to apply for weekly benefits. L.V. did not own a desktop computer, and public libraries and Workforce Development offices were closed during part of the pandemic. L.V. took screenshots to document the processing flaws and continued to use his smartphone to apply for benefits. L.V. separated from his employment with Grocery Works on February 27, 2021.

[4] On July 18, 2023, a Workforce Development claims adjuster determined that L.V. had been overpaid on nine occasions due to his unreported earnings from sick, vacation, and holiday pay, classified as “deductible income” that would cause a corresponding suspension or reduction of unemployment benefits. Specifically, the claims adjuster determined:

For the week ending May 30, 2020, L.V. had earned four hours of holiday pay and his benefits for that week were reduced by \$43.00;

For the week ending July 4, 2020, L.V. had earned four hours of holiday pay and his benefits for that week were reduced by \$43.00;

For the week ending February 13, 2021, L.V. had earned twenty hours of vacation pay and his benefits for that week were suspended;

For the week ending February 20, 2021, L.V. had earned four hours of holiday pay and his benefits for that week were reduced by \$43.00;

For the week ending January 23, 2021, L.V. had earned sixteen hours of sick pay and his benefits for that week were reduced by \$107.00;

For the week ending December 26, 2020, L.V. had earned four hours of holiday pay and his benefits for that week were reduced by \$43.00;

For the week ending September 12, 2020, L.V. had earned four hours of holiday pay and his benefits for that week were reduced by \$43.00;

For the week ending January 9, 2021, L.V. had earned four hours of vacation pay and his benefits for that week were reduced by \$43.00;

For the week ending February 27, 2021, L.V. had earned eight hours each of vacation and holiday pay and his benefits for that week were reduced by \$107.00.

(Appellee's App. Vol. II, pgs. 2, 8, 14, 20, 26, 32, 38, 44, 50.) L.V. appealed those determinations. On September 6, the ALJ conducted a consolidated hearing and affirmed the determination of the claims investigator in each case.

[5] With regard to the circumstances surrounding the incidents of non-reporting, the ALJ found in each case that:

Claimant did not report this ... pay on his weekly voucher. He was unable to as the only method of filing his voucher for this week was his phone. Claimant would reach a page where he was required to list his employer's phone number, but the phone was unable to enter the number in the fields [and] the only way to bypass this page was to start over and list no employer.

(*Id.* at 5, 11, 17, 23, 29, 35, 41, 47, 53.)

[6] L.V. appealed to the Review Board. On September 15, 2023, with two corrections to clerical errors, the Review Board affirmed the ALJ decisions. L.V. now appeals.

Discussion and Decision

[7] The standard of review on appeal of a decision of the Board is threefold: (1) findings of basic fact are reviewed for substantial evidence; (2) findings of mixed questions of law and fact – ultimate facts – are reviewed for reasonableness; and (3) legal propositions are reviewed for correctness. *Recker v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 958 N.E.2d 1136, 1139 (Ind. 2011) (citing *McClain v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1318 (Ind. 1998)). Ultimate facts are facts that involve an inference or deduction based on the findings of basic fact. *Id.* (citing *McClain*, 693 N.E.2d at 1317). Where such facts are within the special competence of the Board, this Court will give greater

deference to the Board's conclusions, broadening the scope of what can be considered reasonable. *Id.* (citing *McClain*, 693 N.E.2d at 1318).

[8] At the time that L.V. received benefits, [Indiana Code Section 22-4-15-4\(a\)\(1\)](#) (2021) provided that an individual “shall be ineligible for ... benefit rights for any week with respect to which the individual receives, is receiving, or has received payments” in the form of “deductible income as defined and applied in [IC 22-4-5-4](#) and [IC 22-4-5-2](#)” if the deductible income equals or exceeds “the individuals’ weekly benefit[.]” Deductible income included, but was not strictly limited to: “renumeration for services, dismissal pay, vacation pay, pay for idle time, holiday pay, sick pay, traveling expenses, net earnings from self-employment, awards by the National Labor Relations Board, and payments made pursuant to the Fair Labor Standards Act.” *M.W. v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 193 N.E.3d 1021, 1024-25 (Ind. Ct. App. 2022) (citing [I.C. § 22-4-5-1\(a\)](#)), *trans. denied*. At that time, deductible income was calculable after excluding “the first three dollars (\$3), or twenty percent (20%) of the claimant’s weekly benefit amount rounded to the next lowest dollar, whichever is the larger.” [I.C. § 22-4-5-1\(b\)](#). If the deductible income was less than the weekly benefit amount, the claimant was “entitled to receive for such week benefits reduced by the amount of such payments.” [I.C. § 22-4-15-4\(b\)](#).

[9] L.V. does not challenge the findings of fact regarding his earning of vacation, holiday, and sick pay during nine weeks that he received unemployment benefits. “We accept unchallenged factual findings as true.” *Z.C. v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 213 N.E.3d 1101, 1108 (Ind. Ct. App. 2023). And

L.V. does not challenge the legal conclusion that such earnings constitute deductible income. He does not assert that there was a miscalculation of benefits. Rather, as best we can discern L.V.'s argument, he contends that his obligation to repay any overpayment of unemployment benefits should be waived because flaws in the Uplink website he accessed by smartphone during the Covid 19 pandemic precluded his accurate reporting.

[10] [Indiana Code Section 22-4-13-1\(i\)](#) provides:

Liability for repayment of benefits paid to an individual (other than an individual employed by an employer electing to make payments in lieu of contributions) for any week may be waived upon the request of the individual if:

(1) the benefits were received by the individual without fault of the individual;

(2) the benefits were the result of payments made:

(A) during the pendency of an appeal before an administrative law judge or the review board under IC 22-4-17 under which the individual is determined to be ineligible for benefits; or

(B) because of an error by the employer or the department;
and

(3) repayment would cause economic hardship to the individual.

[11] It may subsequently be determined that L.V. is not liable for repayment.¹ However, the decisions of the Review Board that are the subject of this appeal do not include a determination regarding waiver or non-waiver of L.V.'s repayment obligation. The decisions on appeal concern the assessment of deductible income and the corresponding calculation of overpayment of weekly benefits. L.V. has shown no error in this regard.

Conclusion

[12] The Review Board did not err in determining that L.V. was overpaid unemployment benefits because he earned unreported deductible income in nine weeks during which he received unemployment benefits.

[13] Affirmed.

Crone, J., and Pyle, J., concur.

APPELLANT PRO SE

L.V.
Merrillville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

¹ L.V. did not submit a transcript of the ALJ hearing, and the Review Board did not conduct a factfinding hearing. However, the parties seem to agree that the ALJ hearing did not focus upon statutory waiver of the repayment obligation.

Abigail R. Recker
Deputy Attorney General

David E. Corey
Deputy Attorney General
Indianapolis, Indiana

Jay R.S. Parks
Leah M. Jones
Unemployment Insurance Review Board
Indianapolis, Indiana