MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

B.H.,

Appellant-Petitioner

v.

Review Board of the Indiana Department of Workforce Development,

Appellee-Respondent

April 2, 2024

Court of Appeals Case No.
23A-EX-2976

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

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

Case No.
23-R-2791

Memorandum Decision by Judge Kenworthy
Judges May and Vaidik concur.

Kenworthy, Judge.

[1] B.H. appeals the determination of the Review Board of the Indiana Department of Workforce Development (the "Review Board") that she was disqualified from receiving unemployment benefits. The Review Board found B.H. was discharged for just cause due to violating her employer's attendance policy. B.H. was aware of the attendance policy but on appeal contends she should not have been disqualified because she had a medically substantiated physical disability and made reasonable efforts to maintain the employment relationship prior to discharge. However, B.H. did not present evidence to show she had a medically substantiated disability or sufficiently advise her employer of the disability and accompanying limitations. We therefore affirm the Review Board's determination that B.H. is ineligible for unemployment benefits.

Facts and Procedural History

[2] A large, nationwide retailer ("Employer") hired B.H. as a Food and Consumables Team Associate in November 2021. At the time Employer discharged B.H., she was making $14 per hour. Employer had an attendance and punctuality policy (the "Policy") to set "clear expectations on attendance," "provide good customer service," and ensure "areas are staffed." *Tr. Vol. 2* at

11. The Policy applied to all hourly associates, and Employer provided it to associates during new employee orientation.

[3] Under the Policy, associates were assessed one point for each unauthorized absence and one-half point for each late arrival. Authorized absences did not accumulate points. Associates who accumulated five or more points in a rolling six-month period were subject to discharge. If an associate anticipated being absent longer than three scheduled shifts, the Policy required the associate to apply for a leave of absence through Employer's third-party insurance carrier, Sedgwick. Sedgwick reviewed leave requests and made eligibility determinations. Associates had access to their attendance and points records online or through an app.

[4] After B.H.'s grandmother passed away and B.H. suffered a heartbreaking pregnancy loss, B.H. took a family medical leave of absence from November 8, 2022, to January 16, 2023. The leave was briefly extended in February when B.H.'s grandfather passed away. B.H. then returned to work. Still struggling with grief, on June 5, 2023, B.H. told her supervisors she planned to make another leave of absence claim with Sedgwick. B.H. opened a claim, but Sedgwick closed it several weeks later because B.H. did not submit paperwork showing a medically substantiated disability. Between May 1 and August 3, B.H. accumulated nine points in unauthorized absences or late arrivals. After the leave of absence claim period and a thirty-day appeals window closed, Employer discharged B.H. from employment on August 4 for violation of the Policy.

[5] The Department of Workforce Development initially determined B.H. was not disqualified from receiving benefits, but Employer appealed the eligibility determination. An Administrative Law Judge ("ALJ") held a telephonic hearing on October 23 at which B.H. and Employer's representative appeared. In an order dated October 25, the ALJ determined Employer discharged B.H. for just cause and B.H. was not involuntarily unemployed due to a medically substantiated physical disability. The Review Board adopted and affirmed the ALJ's decision on December 1. B.H. now appeals proceeding *pro se*.[1]

Employer had just cause to terminate B.H.'s employment, and B.H. did not show she was involuntarily unemployed due to a medically substantiated physical disability.

[6] Any decision of the Review Board is conclusive and binding as to all questions of fact. *J.M. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 975 N.E.2d 1283, 1286 (Ind. 2012) (citing Ind. Code § 22-4-17-12(a)(1995)). When reviewing an unemployment benefits determination, we engage in a two-part inquiry into the sufficiency of (1) the facts found to sustain the decision, and (2) the evidence to sustain the findings of fact. *Id.* (citing I.C. § 22-4-17-12(f)(1995)). We review "(1) determinations of specific or 'basic' underlying facts; (2) conclusions or inferences from those facts, sometimes called 'ultimate facts,' and (3)

[1] We hold *pro se* litigants to the same standard as trained attorneys, while also preferring to resolve cases on their merits when possible. *T.R. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 950 N.E.2d 792, 795 (Ind. Ct. App. 2011).

conclusions of law." *Id*. (quoting *McClain v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1317 (Ind. 1998)).

[7] The Review Board's findings of specific or basic facts are subject to a "substantial evidence" standard of review. *Id*. In this analysis, we "neither reweigh evidence nor judge the credibility of witnesses; rather, we consider only the evidence most favorable to the Review Board's findings." *Id*. We reverse the decision only if there is no substantial evidence to support the Review Board's findings. *Id*. When reviewing conclusions as to ultimate facts or mixed questions of law and fact, we ensure the Review Board's inference is reasonable in light of the Review Board's findings. *Id*. at 1288. Where the question of ultimate fact is within the special competence of the Review Board, we exercise greater deference to the reasonableness of the Review Board's conclusion. *McClain*, 693 N.E.2d at 1318. An example of an ultimate fact is whether a workplace rule is reasonable. *Id*.

[8] An individual is disqualified for unemployment benefits if she is discharged for "just cause." I.C. § 22-4-15-1(a) (2023). "Discharge for just cause" includes "knowing violation of a reasonable and uniformly enforced rule of an employer, including a rule regarding attendance[.]" I.C. § 22-4-15-1(d)(2) (2023). Subsection (d)(2) applies if substantial evidence shows "(1) there was a rule; (2) the rule was reasonable; (3) the rule was uniformly enforced; (4) the claimant knew of the rule; and (5) the claimant knowingly violated the rule." *Company v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 58 N.E.3d 175, 178 (Ind. Ct. App. 2016).

[9] Evidence shows B.H. was aware of the Policy and her attendance and point records. Evidence also supports the ALJ's finding B.H. acquired nine points in a six-month period. Although B.H. argues on appeal that all employees were not held to the same attendance standard, the record does not support her contention. Employer testified at the hearing all employees who reached the five-point threshold were discharged. The ALJ also concluded the Policy was reasonable because it met Employer's business needs. In sum, there is substantial evidence to support the ALJ's conclusion B.H. was discharged for just cause for knowingly violating a reasonable and uniformly enforced attendance rule.

[10] Although B.H. concedes she was aware of the Policy, she contends she should not be disqualified from benefits because she had a medically substantiated disability and kept in close contact with her supervisors while applying for another leave of absence. "An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification[.]" I.C. § 22-4-15-1(c)(2) (2023). To find protection under Subsection (c)(2), an employee must (1) medically substantiate her discharge from employment is the result of a physical disability, and (2) demonstrate she made reasonable efforts to maintain employment by sufficiently advising her employer of her disability and the accompanying limitations with the purpose of seeking reasonable alternate

work assignments. *Y.G. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 936 N.E.2d 312, 315 (Ind. Ct. App. 2010) (citation omitted).

[11] The record shows B.H. contacted Sedgwick in June 2023 to initiate a second leave of absence. But B.H. did not provide documentation of a disability to Sedgwick within the prescribed period nor ask for an extension. Sedgwick closed the request one month later. B.H. also did not submit the required medical documentation during Sedgwick's thirty-day appeals period. "While not absolutely necessary, a physician's statement protects the employee from 'the risk of [her] employer misunderstanding [her] problem and limitations or the risk of inadequately or inaccurately communicating them to the employer.'" *Id*. (quoting *Goldman v. Rev. Bd. of Ind. Emp. Sec. Div.*, 440 N.E.2d 734, 736 (Ind. Ct. App. 1982)). On appeal, B.H. includes in her appendix a copy of a mental health diagnostic evaluation and informs us she had difficulty obtaining documentation due to a change in medical providers. However, B.H. did not provide this evidence to the ALJ or Review Board. As an appellate court, we are prohibited from receiving and reweighing evidence. *T.R.*, 950 N.E.2d at 797–98. Other than her testimony, B.H. did not present at the hearing evidence of a medically substantiated physical disability. The record thus supports the ALJ's conclusion that B.H.'s unemployment did not result from such circumstances.

[12] As to reasonable efforts to maintain employment, Employer allowed B.H. a total of sixty days to complete the leave of absence application and appeals process. But B.H. did not avail herself of Employer's formal process, facilitated

by Sedgwick, to communicate about her disability and limitations and request reasonable accommodations. Although B.H. testified she kept in close contact with her supervisors during that time, Employer's store lead stated he and another supervisor tried to contact B.H. about her excessive absences but were unable to reach her. We cannot reweigh evidence on appeal. *Id*. The record thus supports the ALJ's conclusion that B.H. did not make reasonable efforts to maintain the employment relationship by sufficiently advising Employer through its insurance carrier of her disability and accompanying limitations and seeking reasonable alternate work assignments. Accordingly, B.H. was not involuntarily unemployed due to a medically substantiated physical disability.

Conclusion

[13] Substantial evidence supports the Review Board's determinations that Employer discharged B.H. for just cause and B.H. did not meet the requirements for the medically substantiated physical disability exception. We thus affirm the Review Board's determination that B.H. is ineligible for unemployment benefits.

[14] Affirmed.

May, J., and Vaidik, J., concur.

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