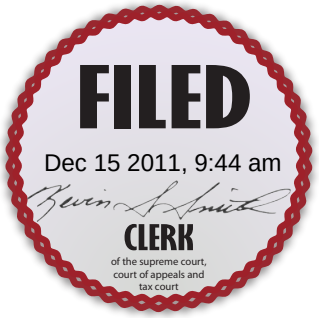


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# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| P.J., | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | |
| vs. | ) | No. 93A02-1102-EX-64 |
| | ) | |
| REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT, and INDIANAPOLIS PUBLIC SCHOOLS. | ) | |
| | ) | |
| Appellee. | ) | |

APPEAL FROM THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
REVIEW BOARD
Cause No. 10-R-7470

**December 15, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary[1]

Appellant, P.J., appeals a ruling of the Review Board of the Indiana Department of Workforce Development ("Review Board") affirming the Administrative Law Judge's ("ALJ") determination that P.J. voluntarily left his employment without good cause and, thus, was ineligible for unemployment compensation. We affirm.

## Issues

P.J. raises three issues, which we restate as:

I. whether the Review Board properly determined that P.J. voluntarily left his employment without good cause;

II. whether P.J. was deprived of a fair hearing; and

III. whether the ALJ properly precluded evidence from consideration as irrelevant.

[1] Two members of this panel believe that the use of initials is appropriate in cases involving the Department of Workforce Development and, thus, we use initials here. See S.S. LLC v. Review Bd. of Indiana Dep't. of Workforce Dev., 953 N.E.2d 597, 604-07 (Ind. Ct. App. 2011) (Crone, J., concurring). The third member of the panel believes that the use of initials is not required. See Moore v. Review Bd. of Indiana Dep't. of Workforce Dev., 951 N.E.2d 301, 304-06 (Ind. Ct. App. 2011).

## Facts

P.J. was employed as a student behavior adjustment facilitator for Employer, an educational institution, from August 2008 until August 6, 2010. He worked full-time as a ten-month employee. His duties included handling students that exhibited behavioral problems in the classrooms and was responsible for getting students back on task to return to their classrooms.

P.J. resigned from his position on August 6 in a letter to the Employer's Director of Human Resources dated August 8. The Department of Workforce Development initially determined that P.J. was ineligible for unemployment compensation because he voluntarily left employment without good cause. P.J. appealed, arguing that he resigned for good cause because he feared for his personal safety and was subject to repeated harassment or mistreatment by his supervisor and co-workers. The ALJ affirmed the denial of unemployment compensation and entered findings of fact as follows:

> The employer is an education[al] institution. The claimant worked as a behavioral facilitator from August 2008 through May 2010. The claimant worked full-time as a ten month employee. The claimant quit his employment on August 6, 2010. The two main reasons that the claimant quit his employment were safety and harassment.
>
> The claimant listed a multitude of incidents that occurred throughout the school year. These incidents involved numerous students, teachers, and administration at the school.
>
> The claimant's job duties were to handle students that had behavioral problems in classrooms. The claimant was responsible for getting students back on task to return to their classrooms. [P.J.'s supervisor, J.B., ("Supervisor")] informed the claimant that his job included "making the students as miserable as possible." Tr. p. 45. [Supervisor] gave that

advice . . . because she did not want students to view his classroom as a fun or enjoyable place, but instead a disciplinary tool for poor behavior.

The claimant had concerns with students leaving his classroom. [Supervisor] told him to stand in the doorway to prevent the students from leaving the classroom. This advice was given to aid the claimant in his job and was not given to set the claimant up for an impermissible act.

The claimant was not present for work at some point in time during the 2009-2010 school year. The employer had not received a telephone call from the claimant regarding his absence. The employer attempted to reach the claimant without success. The employer telephoned the claimant's emergency contact number due to not hearing from the claimant. The claimant became upset that his emergency contact card was used. The claimant asked for the card back. [Supervisor] crossed out the emergency contact telephone instead of returning the card.

The claimant received a written reprimand on September 30, 2009 regarding an incendiary device. The claimant had brought in a piece of pipe another faculty member found on the playground. The claimant brought the device into [Supervisor's] office and informed [Supervisor] that you [sic] thought it to be a pipe bomb. The claimant received the reprimand due to his poor judgment. The claimant did not contact Human Resources to make any official complaint about the reprimand until April 2010.

The claimant . . . asked not to be put in the yearbook because he did not like the way the school was being run. After some discussions with the editors of the yearbook, the claimant's name and picture were removed.

The claimant also had complaints that people were gaining access to his office and his files. [Supervisor] and custodians have access to his office. [J.B.], as the claimant's supervisor, has access to his files. There was no evidence presented that the claimant's office or his files were deliberately being tampered with in any fashion. [Supervisor] did access his files at various times for work purposes.

On January 28, 2010, another teacher . . . came up to the claimant and screamed in his ear. She then told him, "now you know how it feels." The claimant did not immediately report the incident. On January 31, 2010, the claimant reported to [Supervisor] that an incident occurred that he needed to speak with her about. The claimant reported the incident because he was still experiencing pain in his ear. The claimant did not have any concerns that it would occur again or that any other physical assault would occur.

The claimant did not follow up and speak with [Supervisor] about the incident the next day, [as she requested.] Rather, the claimant went to the Administration Building for [Employer] to speak to Human Resources. [Supervisor] did not find out about what occurred during the [January 28] incident until the claimant applied for unemployment insurance benefits. [Supervisor] asked the teacher involved about the incident. The other teacher . . . did not recall such an incident.

The claimant met and spoke with [E.F.], Human Resources Director, on February 1, 2010. . . . The claimant had several complaints to make to [E.F.]. [E.F.] recalled that many of the claimant's concerns or complaints should be addressed at a supervisory level with [Supervisor] first. The complaints [E.F.] received by claimant were understood to be personality conflicts. [E.F.] instructed the claimant to return to the school and address the concerns with [Supervisor]. The claimant was given instructions on transfer application and applying for a different job with the employer's business. The claimant submitted his application for transfer on . . . March 1, 2010. [E.F.] did not recall the claimant mentioning the ear yelling incident with the other school employee. [E.F.]'s notes do not mention the ear yelling incident.

The claimant met with [E.F.] one week later on February 8, 2010. The claimant addressed concerns with files missing from his office and being called names [by Supervisor]. [E.F.] instructed the claimant that she would discuss an administrative transfer, but that type of transfer had to be initiated with the administration of the school. [E.F.] also

told the claimant that if the issues could not be resolved at the school level he could file a formal complaint. [E.F.] never told the claimant that no principal would ever hire him if he filed a formal complaint.

The claimant was accused of spitting on a child in March 2010. The claimant and [Supervisor] met with the mother of the child. The claimant felt that he was undermined in front of the parent. [Supervisor] explained that he was "culturally not a good fit." [Supervisor] explained that this was due to using verbiage and language that the children and sometimes parents did not understand. [Supervisor] supported the claimant in that she did not believe he spat on a student. The claimant was not disciplined for this incident.

The claimant sought medical treatment from the school nurse in March 2010. The school nurse informed the claimant that he needed to seek immediate medical treatment at the emergency room. The claimant went to [Supervisor's] office and asked for permission to leave [work]. [Supervisor] was meeting with two other employees at the time. [Supervisor] informed the claimant that if he needed to go to go and not wait on permission. She also informed him to not worry about coming back. It is unclear what [Supervisor] stated directly, but she made the comment about not coming back meaning the rest of the working day. The claimant alleges that [Supervisor] yelled the comments and she asserts that she may have but does not recall.

[On March 12, 2010,] another teacher sent the claimant an email and carbon copied [Supervisor]. The teacher was complaining that the claimant was letting his students serving suspension play basketball. The claimant took offense to the email as he had not let students serving suspension play basketball. The claimant was not disciplined for anything involving this situation.

[In April 2010,] the claimant and [Supervisor] were walking down the hallway. [Supervisor] referred to the claimant as "Chewbacca" and herself as "Princess Leia" from Star Wars. Later that day, the claimant emailed [Supervisor] and asked her to not call him by that name again. The claimant was not referred to as "Chewbacca" after that incident.

On or about May 4, 2010, a student approached the claimant and told him that [Supervisor] was tired of him. The student, as agreed upon by both parties, was a troublemaker and known for his poor behavior in school. The claimant did not address this comment with [Supervisor]. [Supervisor] denies telling the student she was tired of the claimant.

The claimant received his annual review on May 17, 2010. The employer rates employees work performance on a numbered-scale. The scale is from five through one with five as outstanding, four as exceeds expectations, three as meets expectations, two as needs improvement, and one as unsatisfactory. The claimant was in [Supervisor's] office and could view her computer screen from his location. The claimant saw marks other than fives, fours, and threes on his review and was upset. [Supervisor] changed her original draft and marked every column as threes. The claimant refused to sign his review.

The claimant felt that receiving threes in all categories was harassment by [Supervisor]. The claimant had received fives in all categories the previous year. Both [Supervisor] and [a Human Resources employee] reiterated that receiving threes is a good review. The claimant was reviewed by a different person the previous year. Some supervisors are more critical than others. The claimant also did receive a written reprimand during the 2009-2010 school year.

The claimant called and spoke with [his human resources representative, D.K.,] several times. [D.K.] recalled that the majority of the claimant's concerns were regarding the transfer procedure. [D.K.] explained the procedure to the claimant. The claimant timely submitted his application for transfer.

The employer has anti-discrimination and anti-harassment rules. The rules provide that any employee may report any matter in violation of the rules to any person in the Human Resources Department. It also states that no action will be taken against a person who reports behavior believed to be in violation of the policy.

> The employer has a specific anti-harassment policy. The policy provides that reports may be made to Human Resources and no action will be taken against an employee who makes a complaint. The claimant was aware of [these policies].
>
> The claimant called and spoke to [D.K.] in early August [2010]. The discussion surrounded transfers again. [D.K.] explained that there were no open positions for the claimant to transfer into. She also explained that one employee that had been laid off was recalled and placed into the only vacant position which had just become vacant approximately one to two weeks prior. The employer has rules that place laid off workers in priority positions for job openings with the employer.
>
> The claimant submitted his resignation on August 8, 2010. The claimant waited until just prior to the 2010-2011 school year to resign from his position. This was approximately two months after the 2009-2010 school year had ended.

Ex. pp. 90-92.

The Review Board adopted and incorporated the ALJ's findings of fact and conclusions of law and affirmed the ALJ's determination. P.J. now appeals.

**Analysis**

On appeal, we review the Review Board's (1) determinations of specific or basic underlying facts; (2) conclusions or inferences from those facts, or determinations of ultimate facts; and (3) conclusions of law. McClain v. Review Bd. of Indiana Dep't of Workforce Dev., 693 N.E.2d 1314, 1317 (Ind. 1998). The Review Board's findings of basic fact are subject to a "substantial evidence" standard of review. Id. In this analysis, we neither reweigh the evidence nor assess the credibility of witnesses and consider only the evidence most favorable to the Review Board's findings. Id. Reversal is warranted

only if there is no substantial evidence to support the Review Board's findings. Id. (citing KBI, Inc. v. Review Bd. of Indiana Dep't of Workforce Dev., 656 N.E.2d 842, 846 (Ind. Ct. App. 1995)). Next, the Review Board's determinations of ultimate facts, which involve an inference or deduction based upon the findings of basic fact, are generally reviewed to ensure that the Review Board's inference is reasonable. Id. at 1317-18. Finally, we review conclusions of law to determine whether the Review Board correctly interpreted and applied the law. McHugh v. Review Bd. of Indiana Dep't of Workforce Dev., 842 N.E.2d 436, 440 (Ind. Ct. App. 2006).

We must accept the facts as found by the Review Board, unless its findings fall within one of the following exceptions for which this court may reverse:

> (1) the evidence on which the Review Board based its finding was devoid of probative value, (2) the quantum of legitimate evidence was so proportionately meager as to lead to the conviction that the finding does not rest upon a rational basis, (3) the result of the hearing before the Review Board was substantially influenced by improper considerations, (4) there was no substantial evidence supporting the findings of the Review Board, (5) the order of the [R]eview Board, its judgment, or finding, is fraudulent, unreasonable, or arbitrary, and (6) the Review Board ignored competent evidence.

Willett v. Review Bd. of Indiana Dept. of Emp't and Training Serv., 632 N.E.2d 736, 738 & n.1 (Ind. Ct. App. 1994).

### *I. Voluntary Termination*

P.J. contends that he voluntarily left his employment for good cause because he was subject to harassment by his co-workers and supervisor and his personal safety was threatened. The question of whether an employee voluntarily terminated employment

without good cause is a question of fact to be determined by the Review Board. Indianapolis Osteopathic Hosp., Inc. v. Jones, 669 N.E.2d 431, 433 (Ind. Ct. App. 1996). This court will not reweigh the evidence, but will consider only the evidence that supports the Review Board's decision. Id. We will reverse only if reasonable persons would be bound to reach a conclusion opposite that of the Review Board. Id.

Although one who voluntarily leaves his or her work without good cause is subject to disqualification from employment benefits under Indiana Code Section 22-4-15-1(a), there are circumstances when an employee who voluntarily leaves his or her employment is justified and no disqualification results. Brown v. Ind. Dep't of Workforce Dev., 919 N.E.2d 1147, 1151 (Ind. Ct. App. 2009). In such cases, the claimant bears the burden of proving that he or she left the employment voluntarily with good cause and must establish: (a) the reasons for abandoning employment would impel a reasonably prudent person to terminate under the same or similar circumstances; and (b) these reasons or causes are objectively related to the employment. Id. Furthermore, a stricter good cause standard is applied to those who voluntarily quit work as opposed to those who refuse available work. Marozsan v. Review Bd. of Ind. Emp't Sec. Div., 429 N.E.2d 986, 989 (Ind. Ct. App. 1982). As we have previously stated, "[t]his stricter standard is in keeping with the intent of the legislature and the announced purpose of the Unemployment Compensation Act to avoid the menace of unemployment by encouraging people to maintain present jobs rather than to quit them." Id. (quoting Martin v. Review Bd. of Ind. Empl't Sec. Div., 421 N.E.2d 653, 657 (Ind. Ct. App. 1984)).

The ALJ concluded that P.J's working conditions "were not so unreasonable or unfair that a reasonably prudent person would be impelled to leave the employment." Ex. p. 93. The ALJ based that finding on the following: (1) P.J. testified that he maintained his employment relationship out of his need to maintain health insurance; (2) P.J.'s harassment claims were unfounded and were merely personality conflicts; (3) P.J. was aware that he could file a formal complaint regarding his allegations of harassment, but failed to do so; (4) P.J. was aware of how to resolve conflicts with J.B., as evidenced by the name-calling incident, but, again, failed to do so; (5) P.J. took offense to his annual performance review even though it was not a negative review, and the difference in results from the previous year's annual review was most likely the result of a review by two different supervisors in two different years; and (6) P.J. submitted his resignation on August 8, 2010.

Essentially, P.J. argues that the Review Board should have found his voluntary termination was for good cause. He appears to argue that the adverse treatment from his fellow employees and alleged threats to his personal safety by coworkers would have impelled a reasonably prudent person under the same circumstances to resign.

In reviewing whether an employee left for good cause, we have previously found that good cause is not present when an employee terminates employment for purely subjective and personal reasons. Kentucky Truck Sales, Inc. v. Review Bd. of Ind. Dep't of Workforce Dev., 725 N.E.2d 523, 526 (Ind. Ct. App. 2000). Personal reasons for leaving employment include the failure to get along with co-workers. Quillen v. Review Bd. of Ind. Emp't Sec. Div., 468 N.E.2d 238, 242 n.3 (Ind. Ct. App. 1984). Here, the

Review Board determined that the "claimant's complaints of harassment are personality conflicts, as described by the employer's Human Resources witnesses." Ex. p. 93. For us to determine otherwise would require us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. See Indianapolis Osteopathic Hosp., Inc., 669 N.E.2d at 433.

P.J. also argues that his personal safety was threatened. The ALJ found one incident where a co-worker screamed in P.J.'s ear, causing pain in his ear. However, P.J. did not have any concerns that it would recur or that any other physical assault would occur and did not include safety as one of his reasons for resigning in his August 8, 2010 letter of resignation. Based on these facts, we cannot conclude that the Review Board's finding that P.J. lacked good cause to terminate his employment was unsupported by substantial evidence.

### *II. Fair Hearing*

P.J. argues that he was deprived of a fair hearing when Employer did not comply with discovery requests, resulting in the absence of documents that supported his case. Specifically, P.J. states:

> Because of the failure of [Employer] to provide discovery, and full disclosure, specific documents were not provided that prove my case; specific timelines App. 6, sequence of events that result before the Review Board were tainted. More precisely, I was denied the ability to adequately prepare my cross examination of three key witnesses and challenge these documents and their testimony. Most importantly, I was denied the ability to use this evidence to support my claims and "make my case."

Appellant's Br. pp. 6-7.

P.J.'s argument, as presented, is extremely difficult to follow. It appears that P.J. argues certain documents were not provided, but does not specify the documents that are missing nor how Employer failed to comply with discovery requests. P.J. also does not cite to any evidence in the record nor does he cite to any authority to support his argument.

We have previously stated that "[o]n appeal, it is the complaining party's duty to direct our attention to the portion of the record that supports its contention." Vandenburgh v. Vandenburgh, 916 N.E.2d 723, 729 (Ind. Ct. App. 2009). This duty is mandated by our appellate rules. See Ind. Appellate Rule 46(A)(8)(a); Hebel v. Conrail, Inc., 475 N.E.2d 652, 659 (Ind. 1985) ("A brief should not only present the issues to be decided on appeal, but it should be of material assistance to the court in deciding those issues."). Even if there was evidence to support P.J.'s claims, we are not obligated to search the record and make his case for him. Vandenburgh, 916 N.E.2d at 729. P.J. has provided no cogent argument explaining how he was deprived of a fair hearing nor has he supported his argument with citation to legal authority. This does not comply with our rules. Thus, this issue is waived on appeal. See Quick v. State, 660 N.E.2d 598, 601 n.4 (Ind. Ct. App. 1996) ("When no cogent argument is presented, our consideration of the issue is waived.").

### *III. Evidentiary Issue*

P.J. next argues that the ALJ erred in excluding documents pertaining to his previous work history with Employer. Employer objected to these documents offered

into evidence because the documents were, at the time of the hearing, seven to twenty-two years old and related to his job performance. The ALJ sustained the objection and excluded fifteen of the nineteen pages as irrelevant because they related to job performance and P.J.'s work performance was not raised as an issue and because they were too remote in time. The ALJ did admit into evidence the first four pages of documents, which included his performance evaluation by Employer for the 2009-2010 school year and his evaluation for the previous school year at the same position with the same school.

The admission and exclusion of evidence is within the sound discretion of the ALJ. Shoup v. Review Bd. of Ind. Emp't Sec. Div., 399 N.E.2d 771, 774 (Ind. Ct. App. 1980). Generally, the proceedings before an ALJ are governed by the same rules of evidence and procedure as for civil cases, "but not to such an extent as to obstruct or prevent a full presentation of fact or to jeopardize the rights of any interested party." Gold Bond Bldg. Products Div. Nat'l Gypsum Co., Shoals Plant v. Review Bd. of Ind. Emp't Sec. Div., 349 N.E.2d 258, 267 (Ind. Ct. App. 1976). Thus, the exclusion and admission of evidence is generally within the sound discretion of the ALJ. Id. The discretion is limited in that the ALJ cannot ignore competent evidence nor can the ALJ consider evidence that would be inadmissible according to the "common law and statutory rules of evidence." Id. However, this last principle should not be strictly enforced by the reviewing court. Id. at 267-68.

Here, we find that the ALJ did not ignore competent evidence. The documents P.J. sought to be admitted were inadmissible as irrelevant under the general rules of

evidence. Relevant evidence is that which has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Ind. Evidence Rule 401. Here, P.J. wished to admit into evidence fifteen pages of performance evaluations and letters of recommendation that were dated from November 2, 1988, through October 19, 2004. P.J. claimed he resigned because he was being harassed and feared for his personal safety. He did not claim he resigned due to job performance issues. Thus, performance evaluations and letters of recommendation dated five to twenty-one years ago as of the date of P.J.'s resignation with Employer that pertained to different positions at different schools were not relevant to the determination of this action. The ALJ did not abuse its discretion in excluding this evidence.

**Conclusion**

We cannot conclude that P.J. left his position with Employer for good cause. Further, we find P.J. has waived any issue regarding discovery on appeal and that the ALJ properly determined that the majority of P.J.'s past employment records were irrelevant. We affirm.

Affirmed.

ROBB, C.J., and BRADFORD, J., concur.