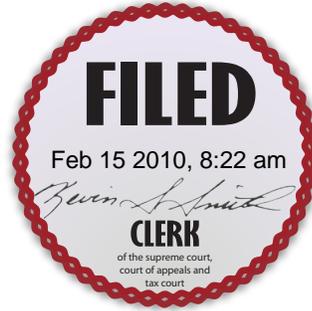


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

JANET L. CLARK
Bloomington, Indiana

ATTORNEYS FOR APPELLEES:

GREGORY F. ZOELLER
Attorney General of Indiana

ELIZABETH ROGERS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JANET L. CLARK,)
)
Appellant-Petitioner,)
)
vs.)
)
REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT, et al.)
)
Appellees-Respondents.)

No. 93A02-0907-EX-697

APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT OF
WORKFORCE DEVELOPMENT
Cause No. 09-R-2353

February 15, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Janet L. Clark appeals the decision of the Review Board of the Indiana Department of Workforce Development (Review Board) concluding that she is not eligible to receive unemployment insurance benefits because she was discharged by the Indiana Department of Transportation (INDOT) for just cause. Finding no error, we affirm.

FACTS

Clark was a storage room clerk for INDOT. Her responsibilities included granting access to the storage area, and INDOT had instructed Clark to refuse to allow unauthorized individuals into the storage area in order to control and protect INDOT's inventory. Notwithstanding this instruction, Clark allowed unauthorized individuals into the storage area.

Clark's responsibilities also included paying INDOT's invoices, but she failed to pay \$8,000 worth of invoices in a timely manner. The untimely payments resulted in late fees totaling over \$456. On February 26, 2009, INDOT discharged Clark.

Sometime around March 9, 2009, a claims deputy with the Indiana Department of Workforce Development determined that Clark had not been discharged for just cause and was eligible to receive unemployment insurance benefits. On March 12, 2009, INDOT appealed this determination, and a hearing was held on May 26, 2009. On May 29, 2009, the Administrative Law Judge (ALJ) issued findings of fact and conclusions of law and reversed the deputy's decision, concluding that Clark had been discharged for just cause. On June 1, 2009, Clark filed an appeal with the Review Board challenging the

ALJ's decision, and on July 2, 2009, the Review Board affirmed the ALJ's decision. Clark now appeals pro se.

DISCUSSION AND DECISION

As an initial matter, the Review Board claims that Clark has waived appellate review for failing to comply with the Indiana Rules of Appellate Procedure. Specifically, the Review Board argues that Clark failed to present a cogent argument and to file an Appellant's Appendix containing a sufficient record to permit appellate review.

Indiana Appellate Rule (Rule) 46(A)(8)(a) states that the appellant's "argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on." An appellant's failure to make a cogent argument with appropriate citations to the record and to legal authorities results in waiver of the issue. Marshall v. State, 621 N.E.2d 308, 318 (Ind. 1993). Additionally, an appellant is required to file an appendix that permits proper review, and the failure to do so can result in dismissal of the appeal. Hughes v. King, 808 N.E.2d 146, 147-48 (Ind. Ct. App. 2004). Furthermore, a person proceeding pro se is "held to the same established rules of procedure that a trained legal counsel is bound to follow." Mullis v. Martin, 615 N.E.2d 498, 500 (Ind. Ct. App. 1993).

In the instant case, we note that the Argument section of Clark's brief states, in its entirety, that, "[t]here was no deliberate violation of any rule or any willful of [sic] wanton disregard of my employer's interest. The evidence can be found in the Transcript

on [Tr. p. 015 p. 016].” Appellant’s Br. p. 5 (brackets in original). Clark does not make any other argument in the Argument section of her brief, but appears to make a second argument in her Statement of the Case. The former contains no citations to authority and is not adequately developed, while the latter is not in the appropriate section of the brief, is not adequately developed, and contains no citations to the record, although it does contain one citation to legal authority.

Moreover, Clark’s appendix does not have page numbers, a table of contents, any portion of the transcript, and is not verified, all of which are required under the Indiana Appellate Rules. See App. R. 50(A)(2) (requiring that the appendix contain page numbers, a table of contents, any portion of the transcript that is important to the issues on appeal, and that the appendix be verified). Under these circumstances, we agree that Clark has waived appellate review.

Waiver notwithstanding, the Review Board did not err when it affirmed the ALJ’s determination that Clark was ineligible to receive unemployment insurance benefits because she had been discharged for just cause. The Indiana Unemployment Compensation Act provides that “[a]ny decision of the review board shall be conclusive and binding as to all questions of fact.” Ind. Code § 22-4-17-12(a). Nevertheless, decisions of the Review Board may be challenged as contrary to law, in which case the appellate court examines the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of fact. Id. at -12(f). The Review Board’s findings are reviewed under a “substantial evidence” standard. Abdirizak v.

Review Bd. of Ind. Dep't of Workforce Dev., 826 N.E.2d 148, 150 (Ind. Ct. App. 2005).

Under this standard, we will neither reweigh the evidence nor assess witness credibility, and we consider only the evidence most favorable to the Review Board's findings. Id. Furthermore, we will reverse the decision only if there is no substantial evidence to support the Review Board's findings. Id.

In the instant case, the Review Board adopted and incorporated the ALJ's findings of fact and conclusions of law. In the findings of fact, the ALJ concluded that:

Ms. Clark was a storage room clerk. She was responsible for granting access to a storage area. INDOT restricts access to the storage area. The purpose for the restriction is to control and protect INDOT inventory. INDOT had instructed Ms. Clark not to allow unauthorized non-INDOT employees into the storage area.

Ms. Clark was responsible for paying INDOT bills. Ms. Clark failed to pay \$8000.00 worth of bills in a timely manner. The late payment resulted INDOT's [sic] paying late fees in the amount of \$456.00.

Appellant's App. p. 3.¹ In the conclusions of law, the ALJ determined that Clark had been discharged for "just cause" because she had "continued to allow unauthorized persons into a restricted area, disregarding reasonable instructions the purpose of which was to control and protect [INDOT] inventory." Id. at 4. Additionally, Employee "failed to pay \$8,000.00 worth of bills, resulting in INDOT's [sic] having to pay \$456.00 in late fees." Id. The ALJ concluded that because Clark had been discharged for just cause, she was ineligible to receive unemployment insurance benefits.

¹ As noted above, the Appellant's Appendix does not contain page numbers; however, this court determined the applicable page numbers.

An individual who is discharged for just cause is ineligible to receive unemployment insurance benefits. I.C. § 22-4-15-1(a). Just cause includes “any breach of duty in connection with work which is reasonably owned an employer by an employee.” Id. at -1(d)(9). When determining whether an employee has breached a duty reasonably owed to an employer, the Review Board

should consider whether the conduct which is said to have been a breach of a duty reasonably owed to the employer is of such a nature that a reasonable employee of the employer would understand that the conduct in question was a violation of a duty owned the employer and that he would be subject to discharge for engaging in the activity or behavior.

Hehr v. Review Bd. of the Ind. Employment Sec. Div., 534 N.E.2d 1122, 1126 (Ind. Ct. App. 1989). Moreover, the burden is on the employer to prove that the employee was discharged for just cause. Ratkovich v. Review Bd. of the Ind. Dep’t of Employment & Training Servs., 618 N.E.2d 44, 46 (Ind. Ct. App. 1993).

Here, the INDOT representative testified that Clark had continued to allow unauthorized individuals into the storage room even though she had been warned not to do so and that she had failed to pay invoices in a timely manner, resulting in INDOT paying over \$456 in late fees. Under these circumstances, a reasonable employee would understand that this conduct breached a duty owed to an employer and that the employee would be subject to discharge for engaging in this conduct. Accordingly, the Review Board did not err by affirming the ALJ’s determination that Clark had been discharged for just cause.

Nevertheless, Clark directs us to Watterson v. Review Bd. of the Ind. Dep't of Employment, 568 N.E.2d 1102, 1105 (Ind. Ct. App. 1991), in which this court held that the employer had failed to prove that the employee had been discharged for just cause because the employer did not introduce into evidence a written copy of the rule that the employee was accused of violating. Clark points out that INDOT did not introduce a written copy of the rules that she was accused of violating during the hearing before the ALJ.

Although Clark is correct regarding this court's holding in Watterson, that case is not on point, inasmuch as it involved Indiana Code section 22-4-15-1(d)(2), providing that "just cause" includes a "knowing violation of a reasonable and uniformly enforced rule of an employer." 568 N.E.2d at 1105. By contrast, Clark was discharged because of a work-related breach of duty, which is addressed by Indiana Code section 22-4-15-1(d)(9). Thus, because INDOT did not allege that Clark violated a reasonable and uniformly enforced rule, there was no written rule for INDOT to introduce. Consequently, the Review Board did not err by affirming the ALJ's determination that Clark was ineligible to receive unemployment insurance benefits because she had been discharged for just cause, and we affirm the decision of the Review Board.

The decision of the Review Board is affirmed.

KIRSCH, J., and DARDEN, J., concur.