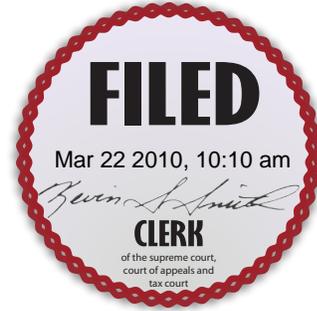


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

S.L.,)
)
Appellant,)
)
vs.) No. 93A02-0908-EX-748
)
REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT and FFC SERVICES, INC.,)
)
Appellees.)

APPEAL FROM THE INDIANA DEPARTMENT OF
WORKFORCE DEVELOPMENT REVIEW BOARD
The Honorable The Honorable Steven F. Bier, Chairperson,
The Honorable George H. Baker, Member, and
The Honorable Larry A. Dailey, Member
Cause No. 09-R-32669

March 22, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Claimant, S.L., appeals the dismissal of his administrative appeal of the denial of unemployment compensation.

We affirm.

ISSUE

S.L. raises one issue for our review, which we restate as: Whether his administrative appeal of the denial of his unemployment compensation was properly dismissed for having been filed untimely.

FACTS AND PROCEDURAL HISTORY

On April 13, 2009, S.L. was discharged from his employment because of absenteeism. He filed for unemployment on April 20, 2009. On May 26, 2009, a claims deputy of the Indiana Department of Workforce Development determined that S.L. was not eligible for unemployment benefits because he had been fired for just cause. On July 10, 2009, S.L. sent a fax to Workforce Development labeled “Appeal.” (Appellant’s App. p. 9). On July 21, 2009, the Administrative Law Judge (ALJ) dismissed the appeal for lack of jurisdiction because S.L. had not filed the appeal within thirteen days of the claims deputy’s decision. S.L. timely appealed the ALJ’s dismissal to the Review Board of Workforce Development (Review Board). The Review Board adopted the ALJ’s findings of fact and affirmed its decision.

S.L. now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION¹

S.L. argues that he should have been given a hearing before the ALJ, and that we should grant his request for unemployment benefits because he has “shown good cause in [his] appeals to the review board . . . to why [he] was discharged . . . for attendance.” (Appellant’s Br. p. 3). When considering an appeal from an unemployment compensation proceeding, we determine whether the decision of the Review Board is reasonable in light of its findings. *Brown v. Ind. Dept. of Workforce Dev.*, 919 N.E.2d 1147, 1150 (Ind. Ct. App. 2009). We neither reweigh the evidence nor assess witness credibility, and we consider only the evidence most favorable to the Review Board’s findings. *Id.* We will reverse the decision only where there is no substantial evidence to support the Review Board’s findings. *Id.* However, where the appeal involves a question of law, we are not bound by the Review Board’s interpretation of the law, and will reverse a decision if the Review Board has incorrectly interpreted the law. *McClain v. Review Bd. of the Ind. Dept. of Workforce Dev.*, 693 N.E.2d 1314, 1317 (Ind. 1998).

Indiana Code section 22-4-17-2(a) provides in relevant part:

Unless the individual, within ten (10) days after such determination was mailed to the individual’s last known address, or otherwise delivered to the individual, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits shall be paid or denied in accordance therewith.

Indiana Code section 22-4-17-14 adds an addition three days to the period to request a hearing when notice is sent via United States mail. Therefore, S.L. had thirteen days to

¹ In the body of S.L.’s brief he requests an oral argument. Finding the issue, facts, and law to be clear, we deny S.L.’s motion for an oral argument.

request a hearing before an ALJ, or the decision of the claims deputy “shall be final and benefits shall be paid or denied in accordance therewith.” I.C. § 22-4-17-2(a).

In *Quakenbush v. Review Board of the Indiana Department of Workforce Development*, 891 N.E.2d 1051, 1053 (Ind. Ct. App. 2008), we stated: “when a statute contains a requirement that an appeal or notice of the intention to appeal shall be filed within a certain time, strict compliance with the requirement is a condition precedent to the acquiring of jurisdiction, and non-compliance with the requirement results in dismissal of the appeal.” S.L. did not file his request for a hearing with the ALJ until more than a month after the claims deputy had denied his request for unemployment benefits; therefore, the ALJ properly dismissed his appeal, and the Review Board appropriately affirmed that decision.

CONCLUSION

Based on the foregoing, we conclude that the ALJ properly dismissed S.L.’s appeal, and the Review Board appropriately affirmed that decision.

Affirmed.

VAIDIK, J., and CRONE, J., concur.