

S.R. appeals from an adverse determination of the Review Board of the Indiana Department of Workforce Development (Review Board) requiring S.R. to repay unemployment benefits. S.R. raises the following issue for our review: Does the record support the Review Board's determination that S.R. knowingly failed to disclose income, thereby causing her to receive an overpayment of unemployment benefits she must now repay?

We affirm.

On December 29, 2009, Erin Certolic (Certolic), a fraud investigator employed by the Indiana Department of Workforce Development (DWD), was assigned to employer protests of the payment of unemployment benefits relating to S.R. for a period of time encompassing April 18, 2009 to March 27, 2010.¹ Certolic met with S.R. during the course of her investigation and confirmed that S.R. had received unemployment benefits when she had also earned income from part-time employment. S.R. explained to Certolic at that meeting that no one had told her that she must report income from part-time employment, and admitted that she did not report that income. Ultimately, Certolic concluded that S.R. had knowingly failed to disclose or falsified material facts in relation to her unemployment benefit claims and issued a determination that S.R. had received benefits to which she was not entitled and must repay the DWD.

S.R. filed an appeal of the determination with the DWD Unemployment Insurance Appeals Division. The administrative law judge (ALJ) heard testimony from S.R. and

Certolic, and took evidence. The ALJ affirmed Certolic's decision finding that S.R. had been overpaid unemployment benefits as a result of a knowing failure to disclose or falsification of material facts relating to her employment. S.R. appealed the ALJ's decision to the Review Board, which affirmed the ALJ's decision without holding a hearing or receiving additional evidence. S.R. now appeals. Additional facts will be supplied.

The Indiana Unemployment Compensation Act (the Act) provides that any decision of the Review Board shall be conclusive and binding as to all questions of fact. Ind. Code Ann. § 22-4-17-12(a) (West, Westlaw current through 2010 2nd Reg. Sess.). When the Review Board's decision is challenged as being contrary to law, a court on review is limited to a two-part inquiry into: (1) the sufficiency of the facts found to sustain the decision; and (2) the sufficiency of the evidence to sustain the findings of facts. I.C. § 22-4-17-12(f). Under this standard, courts are called upon to review (1) determinations of specific or "basic" underlying facts, (2) conclusions or inferences from those facts, sometimes called "ultimate facts," and (3) conclusions thereon. *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 the appellate court neither reweighs the evidence nor assesses the credibility of witnesses and considers only the evidence most favorable to the Review Board's findings. *McClain v. Review Bd. of Indiana Dept of Workforce Dev.* 693 N.E.2d 1314. The Review Board's conclusions as to ultimate facts involve an inference or deduction based on the findings of basic fact. *Id.* As such, they

¹The two investigations of the employer protests were combined by agreement of the parties for purposes of the hearing before the administrative law judge. *Appellee's Appendix.* at 8. We will refer to the investigation

are typically reviewed to ensure that the Review Board's inference is "reasonable" or "reasonable in light of [the Review Board's] findings." *Id.* at 1318. Legal propositions are reviewed for their correctness. *McClain v. Review Bd. of Indiana Dept of Workforce Dev.* 693 N.E.2d 1314.

The Review Board reviews ALJ decisions for errors of fact, law, or procedure based on the record before the ALJ. I.C. § 22-4-17-5(e) (West, Westlaw current through 2010 2nd Reg. Sess.). The Review Board may "affirm, modify, set aside, remand, or reverse the findings, conclusions, or orders of an administrative law judge." *Id.*

The Act, which is essential to public welfare, is designed

to provide for payment of benefits to persons unemployed through no fault of their own, to encourage stabilization in employment, and to provide for integrated employment and training services in support of state economic development programs, and to provide maximum job training and employment opportunities for the unemployed, underemployed, the economically disadvantaged, dislocated workers, and others with substantial barriers to employment

I.C. § 22-4-1-1 (West, Westlaw current through 2010 2nd Reg. Sess.). If a person seeking unemployment benefits knowingly fails to report any income earned during the benefit period then "that would disqualify the individual for benefits, reduce the individual's benefits, or render the individual ineligible for benefits." I.C. § 22-4-13-1.1 (West, Westlaw current through 2010 2nd Reg. Sess.).

S.R. claims that she never "knowingly failed to disclose or misrepresented material facts in her submissions for unemployment insurance benefits" and that she "relied upon direct representations" from employees at the Fishers office of the DWD when submitting

and determination in the singular.

her claims. *Appellant's Brief* at 5. Certolic testified about and presented photocopies of the fraud disclaimer screen applicants must agree to when processing their claims on the computer. The fraud disclaimer screen reads as follows:

Penalties for Falsification

**WARNING
IMPORTANT UNEMPLOYMENT INSURANCE INFORMATION**

I understand that I must report all earnings from employment or self-employment regardless of source, including:

Benefits Rights and Information

For a full description of Benefits, Rights and Information [click here](#) to read the Claimant Handbook. You may print the handbook if you wish. The Claimant Handbook is available on our website at <https://uplink.in.gov>. By clicking the button "Yes, I agree File My Claim" you are agreeing to the responsibilities in the Claimant Handbook and indicating that you understand the Penalties for Falsification above.

Terms and Policies

1) In applying for unemployment benefits, I understand I am required to read the Claimant Handbook. 2) I understand I must be fully or partially unemployed, able and available to work.

Appellee's Appendix at 64. S.R. had to press the button agreeing to the above terms in order to have her claims processed. Certolic further testified that "each week that [S.R.] submitted her vouchers it specifically states that she, that the individual has reported any and all work earnings, self employment activities for this week even though the individual has not been compensated for that work." *Id.* at 28.

We have previously stated the following:

[R]eliance on misinformation provided by a government employee is not a basis for estoppel because the government could be precluded from functioning if it were bound by its employees' unauthorized representations. Courts are reluctant to apply estoppel against the government where a party

claiming to have been ignorant of the facts had access to the correct information.

Dennistarr Envtl, Inc. v. Indiana Dep't of Envtl Mgmt, 741 N.E.2d 1284, 1289-90 (Ind. Ct. App. 2001) (internal citations omitted).

In the present case, we acknowledge that there appears to have been a problem involving the correctness of information being given to claimants by employees at the local offices. In particular, Certolic testified about this as follows:

I just wanted, I do have a couple things that I do want to add. There, the, claims, how do I want to say it? The, the claims people have actually been centralized here to Downtown, and so therefore, we do no, we do not, we do not any longer have claims staff in our local offices. I just do want to point that out that the claims staff is centralized here in Downtown.

Appellee's Appendix at 28. The ALJ then asked Certolic why she thought the centralization of staff had occurred, to which Certolic responded:

I honestly, I honestly don't know, but like I said I, I just know that all the claims staff has been centralized here to Downtown and that the local offices should be referring people to our call center for claims questions of that sort. There has been I can't tell you how many times, you know, misinformation is what, what I'm finding a lot.

Id. That said, S.R. admitted to Certolic that she earned income from part-time employment during her benefit period, but did not report that income when making some of her claims. S.R. had the correct information provided to her on the fraud disclaimer screen, which indicated that the claimant was required to report *all* income from employment regardless of the source. S.R.'s failure to read that screen prior to agreeing to its terms, or her reliance upon misinformation from employees at the local office does not excuse the fact that she earned income from part-time employment and did not report that income, thus disqualifying

her from some benefits she received. There was sufficient evidence in the record to support the determination of the ALJ and the Review Board.

In addition, because S.R. knowingly withheld income information she was overpaid unemployment benefits. I.C. § 22-4-13-1(g) (West, Westlaw current through 2010 2nd Reg. Sess.) provides that an individual who was overpaid benefits must repay the amount of the overpayment to the DWD. There are exceptions to the repayment requirement set forth in I.C. § 22-4-13-1(h), but the record is silent as to whether S.R. provided that documentation to the DWD, or if her situation fell within one of those exceptions providing for a waiver of the repayment requirement.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.