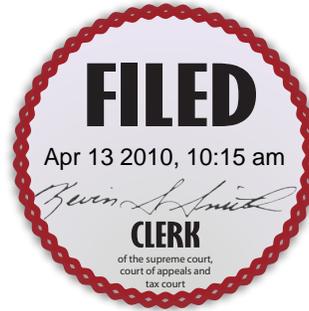


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

M.D.
Gary, Indiana

ATTORNEYS FOR APPELLEES:

GREGORY F. ZOELLER
Attorney General of Indiana

STEPHANIE L. ROTHENBERG
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

M.D.,)
)
Appellant,)
)
vs.) No. 93A02-0911-EX-1076
)
REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT, et al.,)
)
Appellees.)

APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT OF WORKFORCE
DEVELOPMENT

The Honorable Steven F. Bier, Chairperson
The Honorable George H. Baker, Member
The Honorable Lawrence A. Dailey, Member
Cause No. 09-R-4313

April 13, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

M.D. appeals the decision of the Unemployment Insurance Review Board (“the Review Board”) affirming the suspension of his unemployment benefits. We affirm.

Issue

M.D. raises two issues, which we consolidate and restate as whether the Review Board properly suspended his unemployment benefits.

Facts

On January 1, 2008, M.D. began delivering pizzas for State Line Pizza, Inc. On April 2, 2008, M.D. called his supervisor, Richard Sypudt, and informed Sypudt that his car had broken down. Sypudt gave M.D. time to have the car repaired. On April 9, 2008, M.D. called Sypudt and told Sypudt that his car still was not running and that he could not get it fixed. M.D. could not deliver pizzas without a car, and the parties agreed that he would have to discontinue his employment at State Line Pizza. Approximately one week later, M.D. called Sypudt and informed Sypudt that he had borrowed a van and could report to work. By that time, however, another driver had been hired. M.D. returned his keys, and Sypudt offered to give M.D. a good reference.

On December 10, 2008, M.D. sought unemployment benefits. On January 28, 2009, a deputy from the Unemployment Insurance Adjudication Center determined that M.D. voluntarily left his employment and suspended his benefits. M.D. appealed and, on September 3, 2009, after a telephonic hearing, an administrative law judge (“ALJ”)

determined that M.D. voluntarily left his employment because of a personal, subjective reason and without good cause in connection with the work. M.D. appealed that decision to the Review Board. On October 15, 2009, the Review Board affirmed the ALJ's decision. M.D. now appeals the Review Board's decision.

Analysis

M.D. argues the Review Board erroneously concluded that he voluntarily left his employment "without good cause in connection with the work" because he could not deliver pizzas without a car. See Ind. Code § 22-4-15-1(a).

The Indiana Unemployment Compensation Act provides that any decision of the DWD Review Board is conclusive and binding as to all questions of fact. Ind. Code § 22-4-17-12(a). Review Board decisions may be challenged as contrary to law, in which case we examine the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of facts. I.C. § 22-4-17-12(f). "Under this standard, we review determinations of specific or basic underlying facts, conclusions or inferences drawn from those facts, and legal conclusions." Quakenbush v. Review Bd. of Ind. Dep't of Workforce Dev., 891 N.E.2d 1051, 1053 (Ind. Ct. App. 2008).

When reviewing a decision by the Review Board, we must analyze whether the decision is reasonable in light of its findings. Id. We evaluate Review Board findings to determine whether they are supported by "substantial evidence." Id. 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 only if there is no substantial evidence to support the Review Board's findings. Id. We further note that the Unemployment Compensation Act is given a liberal construction in favor of employees because it is social legislation with underlying humanitarian purposes. Id.

Coleman v. Review Bd. of Ind. Dep't of Workforce Dev., 905 N.E.2d 1015, 1019 (Ind. Ct. App. 2009).

“The purpose of the unemployment compensation act is to provide benefits to those who are involuntarily out of work, through no fault of their own, for reasons beyond their control.” Davis v. Review Bd. of Ind. Dep't of Workforce Dev., 900 N.E.2d 488, 492 (Ind. Ct. App. 2009) (citation omitted). “Consistent with the purpose of unemployment compensation laws, a stricter standard is imposed on those who voluntarily quit working.” Id. “An employee who voluntarily leaves employment without good cause in connection with the work is not entitled to unemployment compensation benefits.” Id. (citing I.C. § 22-4-15-1(a)). The employee has the burden of establishing that he or she quit for good cause. Id. The determination of whether an employee quit for good cause is a question of fact for the Review Board. Id.

“To establish ‘good cause’ justifying voluntary termination of employment with entitlement to unemployment benefits, the claimant must demonstrate that the reasons for terminating the employment are job related and objective in character, excluding reasons which are personal and subjective.” Lofton v. Review Bd. of Ind. Employment Sec. Div., 499 N.E.2d 801, 802 (Ind. Ct. App. 1986). The claimant must also demonstrate that the reasons for terminating the employment are of such character as would impel a reasonably prudent person to take like action under similar circumstances. Id.

It is undisputed that without a car, M.D. would have been unable to “discharge his duties as a delivery driver.” Appellant’s Br. p. 4. In that sense, this case is distinguishable from cases in which an employee does not have transportation to get to

and from work, which is clearly the responsibility of the employee. See Jones v. Review Bd. of Ind. Employment Sec. Div., 442 N.E.2d 1120, 1122 (Ind. Ct. App. 1982).

Nevertheless, M.D. offered no explanation for the delay in repairing his car. At the hearing before the ALJ, he stated:

I called [Sypudt] at home on April 2nd and told him my car had broken down. And he asked if I could possibly, when, you know I could get it running again and I thought I told him I would try to have it running by the next day. And I called him the next day and told him that I still hadn't fixed it and I wasn't going to be able to come in until I got it fixed. Following that about a week elapsed and I called him back because I had borrowed a van from a friend of mine and I told him I could report to work.

Tr. p. 4. It is unclear why M.D. did not fix his car. Without more, the fact that M.D. had not fixed his car and no longer had a car with which to make deliveries was personal to his situation and was not attributable to his employer.

We reached the same conclusion in Wicker v. Review Board of Indiana Employment Security Division, 173 Ind. App. 657, 365 N.E.2d 787 (1977). There, Wicker was told when she was hired that she would receive mileage for only one round trip between the kitchen and classrooms and that it was her responsibility, as a condition of her employment, to provide a car. Wicker, 173 Ind. App. 659-60, 365 N.E.2d at 788. Wicker's employer neither required her to use a particular vehicle nor agreed to be the insurer of any vehicle. Id. at 660, 365 N.E.2d at 788. We upheld the board's decision that the employer lived up to all conditions of Wicker's employment. We concluded, "That claimant's vehicle broke down, even if through no fault of her own, does not transform what was a personal reason for abandoning work into one attributable to her

employer.” Id., 365 N.E.2d at 788. Likewise, even though M.D.’s car broke down through no fault of his own, his personal reason for leaving work is not attributable to his employer. See id., 365 N.E.2d at 788.

M.D. also relies on Jean v. Review Board of Indiana Employment Security Division, 429 N.E.2d 4, 6 (Ind. Ct. App. 1981), in which Jean was employed at Domino’s Pizza to deliver pizzas until he wrecked his car. Jean was then employed elsewhere until he was laid off. After being laid off, Jean inquired at Domino’s about a job opening. Jean was offered his old job, but he did not accept the position because he still did not have a car. As a result of not accepting this position, Jean’s unemployment benefits were suspended.

On appeal, we determined whether Jean refused an offer of suitable work without good cause. Jean, 429 N.E.2d at 5. We concluded:

Based upon the uncontroverted evidence in the record which shows that the sole reason Jean did not accept the position with Domino’s was because he did not have a car, and a car was a necessary qualification for the job, reasonable persons would be bound to reach the conclusion that he refused the offer with good cause.

Id. at 6. We reasoned:

The absurdity of the result reached by the Review Board is perhaps best summarized in the following quotation from Jean’s brief: “The suggestion that claimant must lose his unemployment benefits or accept a job which would require him to race on foot through the streets of Bloomington carrying a stack of rapidly deteriorating pizzas in his arms is as far removed from the purpose of the Act as the suggestion that a newly blind person must choose to either return to his previous employment as a proofreader or lose his unemployment compensation.”

Id. (quoting Appellant’s Br. p. 16).

We have observed, however, that the definitions of “good cause” for refusal of employment under Indiana Code Section 22-4-15-2 and “good cause in connection with the work” for voluntarily leaving employment under Indiana Code Section 22-4-15-1 are different. Martin v. Review Bd. of Ind. Employment Sec. Div., 421 N.E.2d 653, 656 (Ind. Ct. App. 1981). Specifically, “The latter ‘good cause in connection with the work’ requirement means the reasons for termination of employment must be job-related and thus objective in character, excluding reasons which are purely personal and subjective.” Id. at 657. “Conversely, the same personal reasons which would not constitute good cause in connection with work may constitute good cause for refusing employment if the claimant’s restrictions do not effectively remove her from the labor market.” Id. “Thus, although neither the statute nor our case law completely defines ‘good cause’ for every occasion, the statute anticipates a less strict standard for the refusal of new employment than does the statute containing the ‘good cause in connection with the work’ standard for voluntarily leaving employment.” Id. Based on this distinction, we cannot conclude that the holding in Jean is applicable to this case, which involves good cause for voluntarily leaving employment, not good cause for the refusing new employment.

Conclusion

M.D. left his employment because his car broke down and he was unable to fix it, which is a personal and subjective reason. M.D. has not established that the Review Board improperly suspended his benefits. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.