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**IN THE  
COURT OF APPEALS OF INDIANA**

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L.R., )  
 )  
Appellant, )  
 )  
vs. ) No. 93A02-1009-EX-1010  
 )  
REVIEW BOARD OF THE INDIANA )  
DEPARTMENT OF WORKFORCE )  
DEVELOPMENT, )  
 )  
Appellee. )

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APPEAL FROM THE REVIEW BOARD  
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT  
Case No. 10-R-03759

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**April 20, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

L.R. appeals the decision of the Review Board of the Indiana Department of Workforce Development (“the Board”), concluding that L.R. is disqualified from receiving unemployment insurance benefits because he was discharged for just cause from the employment of S.F. (“Employer”). L.R. presents the sole issue of whether the decision is contrary to law. We affirm.

### **Facts and Procedural History**

Adopting the facts found by the Administrative Law Judge (“ALJ”), “except to the extent inconsistent with [the Board] decision,” the Board recited the relevant facts as follows:

The Claimant worked for the Employer, a glass installation company, as an installing tech from November 30, 2009 until his discharge on February 4, 2010. The Claimant’s job duties included installing windshields and other repairs either as stationary or mobile work. The Claimant was discharged from employment on February 4, 2010 for insubordination and refusal to perform a work task.

The Employer has Associate Conduct Guidelines that inform employees what types of conduct are prohibited by the Employer. Employer’s Ex. 1. Employees are informed that violation of the Associate Conduct Guidelines can lead to “appropriate corrective action and/or termination.” Employer’s Ex. 1. One of the Employer’s Associate Conduct Guidelines prohibits “[f]ailure to follow instructions, perform designated work, or cooperate with a supervisor or coworker.” Employer’s Ex. 1. The Claimant was aware of the Employer’s policy regarding refusal to follow instructions and knew that refusing to follow instructions could cause termination.

The Employer does some glass repairs at its shop, which the Employer considers to be stationary work. The Employer also offers glass installation and repair services on-site for its customers, which the Employer considers to be mobile work. The Claimant primarily worked in the shop, but he performed some mobile work for the Employer. When employees perform mobile services, the Employer provides a vehicle for the employee. When the Claimant was required to perform mobile work in the past, he had complained

that his personal tool box was too big for the Employer's vehicle. The Claimant had been advised to get a smaller tool box, to which the Claimant had responded "buy it for me." The Claimant had also been told he could create a makeshift toolbox by placing necessary tools in a cardboard box to take on-site with him. The Claimant did not like the suggestion, because he preferred to have all of his tools with him when he performed on-site repairs.

On February 4, 2010, the Claimant was scheduled to work at the shop. The Employer received a call from one of its commercial accounts that requires same-day service. Because work in the shop was slow, and employees were basically sitting around waiting for work, the Service Supervisor asked the Claimant to take the mobile repair. He did not want to take the mobile route, and when asked again to take the mobile repair, he responded that he would if the Service Supervisor loaded his toolbox for him. After twice refusing to take the mobile assignment from the Service Supervisor, the Tech Manager also asked him to take the mobile assignment. The Claimant refused again. The Tech Manager found another employee to take the mobile assignment. The Claimant was discharged for insubordination and refusing to do work. The Claimant was told during his discharge that he did not have a "[S.F.] attitude." If another employee had behaved similarly, he likewise would have been terminated.

(App. 2-3.)

On March 4, 2010, a claims deputy of the Indiana Department of Workforce Development determined that L.R. was not discharged for just cause and thus was not disqualified from receiving unemployment insurance benefits. Employer appealed. After a hearing, the ALJ affirmed the deputy's decision, observing that the stated reason for discharge was L.R.'s lack of a "[S.F.] attitude" (not accompanied by further explanation) and that the employer testimony had concerned a failure to follow instruction. (App. 6.) In light of the perceived discrepancy, the ALJ found "the employer failed to present sufficient evidence to show the claimant breached a duty in connection with work in wantonly disregarded [sic] the interest of the employer." (App. 6.) Employer appealed to the Board.

The Board reversed the decision of the ALJ upon determining that L.R. was discharged for just cause, pursuant to Indiana Code Section 22-4-15-1(d). The Board decision cited concurrent bases for “just cause,” that is, failure to follow instruction and violation of an employer rule. The Board concluded that the ALJ had “taken an approach” that was “too legalistic” when determining that an employer may not deviate from its stated reason for discharge given to the employee at the time of discharge, and further concluded that “having a [S.F.] attitude” necessarily encompassed following an employer instruction. (App. 3.) This appeal ensued.

## **Discussion and Decision**

### Standard of Review

The Indiana Unemployment Compensation Act (“the Act”), Indiana Code art. 22-4, 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). Indiana Code Section 22-4-17-12(f) provides that when the Board’s decision is challenged as contrary to law, the reviewing court 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.” 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 of law. McClain v. Review Bd. of Ind. Dep’t of Workforce Dev., 693 N.E.2d 1314, 1317 (Ind. 1998).

Review of the Board’s findings of basic fact is subject to a “substantial evidence”

standard of review. Stanrail Corp. v. Review Bd. of Ind. Dep't of Workforce Dev., 735 N.E.2d 1197, 1202 (Ind. Ct. App. 2000), trans. denied. 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 Board's findings. Id. We will reverse the decision only if there is no substantial evidence to support the Board's findings. Id. The Board's determinations of ultimate facts involve an inference or a deduction based upon the findings of basic fact, and the ultimate facts are typically reviewed to ensure that the Board's inference is reasonable. Id. We examine the logic of the inference drawn and impose any applicable rule of law. Id. Some questions of ultimate fact are within the special competence of the Board, and it is therefore appropriate for us to accord greater deference to the reasonableness of the Board's conclusion. Id. However, as to ultimate facts which are not within the Board's area of expertise, we are more likely to exercise our own judgment. Id.

Finally, we review conclusions of law to determine whether the Board correctly interpreted and applied the law. Id. "In sum, basic facts are reviewed for substantial evidence, conclusions of law are reviewed for their correctness, and ultimate facts are reviewed to determine whether the Board's finding is a reasonable one." Id.

#### Analysis

The Act provides benefits to persons who are out of work through no fault of their own. Giovanoni v. Review Bd. of Ind. Dep't of Workforce Dev., 927 N.E.2d 906, 908 (Ind. 2010). Unemployment insurance benefits are not an unqualified right and may be denied to claimants who are disqualified by an exception provided in ch. 22-4-15. Id. An individual is

disqualified if discharged for “just cause,” Ind. Code § 22-4-15-1, defined in subsection (d)(2) to include “knowing violation of a reasonable and uniformly enforced rule of an employer” and in (d)(5) to include “refusing to obey instructions.”

To make out a prima facie case of termination for just cause based upon a violation of an employer rule, the employer must show that the employee (1) knowingly violated (2) a reasonable and (3) uniformly enforced rule. *Id.* (citing McClain, 693 N.E.2d at 1318). A uniformly enforced rule is one carried out such that all persons under the same conditions and in the same circumstances are treated alike. Stanrail Corp., 735 N.E.2d at 1203.

Here, the Board found that L.R. had knowingly violated a reasonable, uniformly enforced written rule that he was required to follow Employer instruction and perform designated work. L.R. challenges the Board’s finding of the ultimate fact that his employment was terminated for just cause, thus disqualifying him from receiving benefits. As to the basic facts supporting the ultimate fact, L.R. challenges the finding of uniform enforcement. L.R. argues that Employer was unable to show uniform enforcement because the testimony reveals that L.R. had refused to do off-site assignments on two occasions prior to February 4, 2010, without adverse consequences. Accordingly, in L.R.’s view, the rule was not uniformly enforced and his termination was arbitrary.

L.R. points to the following testimony of Tech Manager Gus Wasson (“Wasson”):

Question: Sir, you had mentioned you said earlier you had discussions with the claimant. Had you had earlier discussions on different days with the claimant about going out to jobsites?

Wasson: Yes.

Question: And what had the claimant told you those times?

Wasson: Basically that he, he didn't want to go do them. He didn't want to go out to do the mobile jobs. He, he wanted, he basically just wanted to stay inside.

(Tr. 10.) The foregoing testimony does not support L.R.'s claim that he twice refused mobile work assignments prior to February 4, 2010, without adverse consequences. Wasson, asked to describe "discussions" that he had with L.R. about mobile work assignments, testified that L.R. "wanted to stay inside." (Tr. 10.) The testimony describes L.R.'s stated preference of work assignments. It does not establish that L.R. had, in the context of an actual assignment to perform mobile work, refused to do so.

The evidence most favorable to the Board's findings indicates that L.R. was given a mobile assignment on February 4, 2010, and thrice refused that particular assignment, twice in response to supervisor Deanna Crouch ("Crouch"), and once in response to Wasson. Specifically, Wasson and Crouch testified:

Question: Now sir, if you could tell the Judge, we've already got the dates for the record of February 4<sup>th</sup>, 2010, was there a situation where you were trying to get [L.R.] to do a mobile repair job and he refused to go?

Wasson: Correct.

Question: And can you tell us, just start from the point where you came in contact with [L.R.]. Can you lead us from there, what happened?

Wasson: Basically, he was asked to do a mobile job. We were slow in shop. And he basically said if we were to load his tools that he would, he would be more than happy to do it, if we were to load his tools.

(Tr. 8.)

Question: And so at that point in time sir, would you, how many times did you tell the claimant that you wanted him to go do the job?

Wasson: Basically just once, and you know, then I got that so we would find somebody else to go do it.

Question: In fact sir, were you the first person to tell the claimant to go do this job or was there somebody, somebody else telling him before you?

Wasson: Only on one occasion did I do that. Two other occasions our services manager, Deanna, asked him.

Question: In fact sir, we're talking about the last, February incident. How many times did you tell the claimant to go out and do the job?

Wasson: That time just, I, I asked him once.

Question: How about, do you know, Ms. Crouch, how many times did she ask?

Wasson: That I'm aware of two.

(Tr. 10-11.)

Question: Now ma'am, we've talked about the incident that took place on February 4<sup>th</sup>, 2010, was there a problem that took place on or about this day regarding the claimant and doing a service job?

Crouch: Yes.

Question: Okay and can you tell the Judge what happened?

Crouch: We received a few commercial accounts that required same day service. A couple jobs come across. The shop was slow. We utilize the in-shop techs since we had no work. No more mobile techs available to do the job. We required [L.R.] to go to do the jobs and he advised no that he did not want to go mobile.

Question: In fact ma'am, how many times did you tell him to do this?

Crouch: Twice.

Question: What did he say to you both times?

Crouch: He did not want to go mobile and if I offered to load his toolbox then he would go.

(Tr. 12.)

The testimony establishes that L.R. refused to obey employer instruction on February 4, 2010. Such would constitute behavior falling within the purview of Indiana Code Section 22-4-15-1(d)(5) (disqualification for refusing to obey instructions). There is evidence that Employer incorporated the requirement of following instructions into a “rule.” The Board expressly found such a rule to be reasonable and we must agree, as it is derived from statutory authority. With regard to the matter of lack of uniform enforcement, L.R.’s contention that there was testimony of prior, unrelated instances of his refusing a job assignment is not supported by the record. Moreover, there was testimony that any employee of Employer refusing to follow an instruction to perform a particular job assignment would be terminated.

There is substantial evidence to support the Board’s basic findings of fact that L.R. refused an instruction to perform a mobile job assignment, that a corollary and reasonable rule existed, and that it was uniformly enforced. The Board’s determination of the ultimate fact that L.R. was terminated for just cause is reasonable. The conclusion that L.R. is disqualified from receiving unemployment insurance benefits is not contrary to law.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.