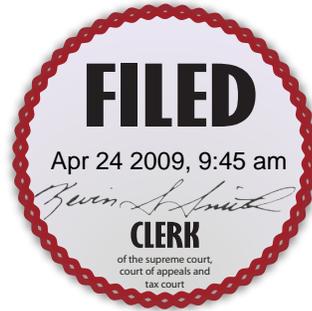


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JEANNIE J. WILLIS,)

Appellant,)

vs.)

No. 93A02-0809-EX-858

REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT and VALUE VILLAGE, INC.,)

Appellees.)

APPEAL FROM REVIEW BOARD OF THE
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 08-R-02328

April 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Jeannie J. Willis appeals from the decision of the Unemployment Insurance Review Board (“the Board”) after her employment with Value Village, Inc., was terminated. Willis raises a single issue for our review, which we restate as whether the Board’s decision is contrary to law.

We affirm.

FACTS AND PROCEDURAL HISTORY

The ALJ entered the following facts and conclusions, which were adopted by the Board:

Claimant worked for Employer from September of 1999 to March 19, 2008, in the position of Line Puller. Employer discharged Claimant for violation of the company policy prohibiting misconduct.

Employer’s policy states that employee misconduct, in connection with work, is grounds for immediate dismissal. Claimant signed an acknowledgment form for the policy. Cedrick Cummings, City Manager, testified that all employees are subject to discharge for misconduct. And, the reason for the rule is to ensure employees follow certain guidelines in order to maintain employment.

The written policy and acknowledgment form were not submitted into evidence at the time of the hearing. However, Claimant agreed to Employer’s statement of the policy, and agreed she was aware of the policy.

During the course of employment, Claimant received three written warnings for instances of misconduct before discharge. In November of 2007, Claimant was discharged for drinking a beverage on the ‘field floor’ instead of during her scheduled lunch time. On February 6, 2008, Claimant was warned for sleeping during work. On March 10, 2008, Claimant received a warning and suspension after socializing on the sales floor. With the suspension, Employer informed Claimant [that] the consequences for a further instance of misconduct is discharge.

Employer discharged Claimant, on March 19, 2008, for a further instance of inappropriate behavior. That evening, Claimant [had] collected her personal belongings to go home, from the back room, before finishing her work assignments.

Claimant testified she was discharged because she went to the office to get her coat before clocking out. Claimant was going to be picked up from work that night and she wanted to have all belongings with her when her friend came, so as not to delay her ride. Claimant does not think her discharge is fair because another employee, Selena Johnson, got her coat before the end of her shift that evening and was not discharged. Claimant believes it is silly she was discharged for “going to get her coat.” Additionally, Claimant maintains she was never informed that picking up personal belongings before the end of a shift was prohibited behavior. Claimant testified she did that same activity the night before the discharge, and no one said anything to her about it.

Mr. Cummings testified Employer cannot “catch” all bad behavior and discipline for it. If Claimant engaged in the same behavior on March 18, Employer was not aware. And, if Employer was aware another employee picked up her belongings before the shift ended, that employee would also have been disciplined.

Mr. Brown [sic¹] asserts all employees know that they must remain at their posts until clocking out. After clocking out, employees may gather their belongings. Additionally, Mr. Brown [sic] testified Claimant knew her actions were prohibited. When questioned, Claimant admitted she could only recall two instances where she picked up her coat early, on March 18 and March 19, of 2008, in the eight years she worked for Employer.

* * *

Here, the [ALJ] concludes Claimant knowingly violated a reasonable and uniformly enforced rule prohibiting misconduct. Employer’s rule was not in writing when introduced into evidence at the time of the hearing. However, Claimant agreed Mr. Cummings described the policy accurately and admitted awareness of the policy.

Employer’s rule is reasonable as an incentive for employees to behave reasonably and appropriately at work. Employer’s rule is uniformly

¹ The ALJ erroneously twice refers to Cummings as Brown.

enforced because all employees are subject to dismissal for engaging in standards of behavior that fall below Employer's expectations.

Additionally, Claimant knowingly violated Employer's rule. Claimant was warned multiple times for inappropriate behavior at work. For the last warning, Claimant was suspended from work and at that time, she knew her job was in jeopardy. Claimant maintains she was unaware picking up her coat to leave before work ended was unacceptable. However, Claimant must have known the activity was questionable, at least, when she engaged in that activity on only two occasions during the course of her employment. After Claimant's suspension, she should have reasonably known, in order to maintain employment, . . . not to behave in a manner that could be perceived by Employer as inappropriate.

Employer offered Claimant many opportunities to correct her behavior; she did not, and was discharged. Employer demonstrated it discharged Claimant for just cause, under Indiana Unemployment Law.

Exhibits Record at 18-19; Appellee's App. at 43-44.² This appeal ensued.

DISCUSSION AND DECISION

Willis challenges the Board's conclusion that she was terminated for just cause. Our standard of review when considering decisions of the Board is governed in part by statute. Indiana Code Section 22-4-17-12(a) provides that a "decision of the review board shall be conclusive and binding as to all questions of fact." The Board's decisions may, however, 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." Ind. Code § 22-4-17-12(f). Pursuant to this standard, we review determinations of specific or basic underlying facts, conclusions or inferences drawn from those facts, and legal conclusions. Owen County v. Ind. Dep't of Workforce Dev., 861 N.E.2d 1282, 1290 (Ind. Ct. App. 2007).

² Willis did not file an Appellant's Appendix.

Review of the Board's findings of basic fact is subject to a "substantial evidence" standard of review. In this analysis, we neither reweigh the evidence nor assess the credibility of witnesses and consider only the evidence most favorable to the Board's findings. We will reverse the decision only if there is no substantial evidence to support the Board's findings.

The Board's determinations of ultimate facts involve an inference or deduction based upon the findings of basic fact and is typically reviewed to ensure that the Board's inference is reasonable. We examine the logic of the inference drawn and impose any applicable rule of law. 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. However, as to ultimate facts which are not within the Board's area of expertise, we are more likely to exercise our own judgment.

Finally, we review conclusions of law to determine whether the Board correctly interpreted and applied the law. 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. The amount of deference given to the Board turns on whether the issue is one within the particular expertise of the Board.

Id. (quotation and citation omitted).

Here, without citation to the record or any legal authority, Willis states that she was not dismissed for just cause for three reasons. First, she states that Value Village's management knew of another employee who retrieved her coat before her shift ended but did not terminate that employee. Second, Willis states that she was not "given a warning or any sort of notification" that she was acting in violation of Value Village's employment policies. Appellant's Brief at 2.³ Third, Willis argues that the ALJ did not permit her to call three witnesses "who know my character and behavior on the sales floor as being a 'helpful, hard-working' employee." Id.

³ The pages of the Appellant's Brief are not numbered. Our pagination begins with the first page inside the cover.

Willis's first two arguments are simply requests for this court to reweigh the evidence that was before the ALJ. Again, based on Cumming's testimony, the ALJ specially found that Value Village management was not aware of another employee picking up her belongings before her shift ended. See Appellee's App. at 44. And, based on Willis's admissions, the ALJ concluded that Willis "must have known the activity was questionable, at least, when she engaged in that activity on only two occasions during the course of her employment" and that Willis "agreed that Mr. Cummings described the policy accurately and admitted awareness of the policy." Id. Thus, the ALJ's findings and conclusions were supported by substantial evidence, were reasonable, and were not contrary to law. We will not reassess the evidence relied upon by the ALJ. Owen County, 861 N.E.2d at 1290.

Similarly, we are unable to review Willis's third argument. On this issue, Willis states that the ALJ did not permit her to call three witnesses "who know my character and behavior on the sales floor as being a 'helpful, hard-working' employee." Appellant's Brief at 2. But Willis has not cited to the relevant portions of the transcript that would demonstrate the ALJ's actions or her objections to those actions. Nor has Willis demonstrated that the ALJ's purported evidentiary decision was not harmless. Thus, Willis has waived this alleged error for our review. See Ind. Appellate Rule 46(A)(8)(a).

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.