

BARNES, Judge

Case Summary

B.P., LLC, appeals the decision of the Department of Workforce Development's Unemployment Insurance Review Board ("the Review Board") approving K.S.'s claim for unemployment benefits. We affirm.

Issue

The sole restated issue is whether the Review Board's decision is supported by substantial evidence.

Facts

The evidence most favorable to the Review Board's decision is that B.P. employed K.S. as a nursing home administrator, beginning in December 2007. On February 18, 2010, K.S., the director of nursing at the nursing home, and the B.P. corporate office all became aware of a situation that had placed one of the residents at the home in "immediate jeopardy," which is a term of art employed by the Indiana State Department of Health ("ISDH") with respect to federal nursing home regulation. Specifically, a resident who required a special mattress developed a pressure sore due to the mattress not having sufficient padding. After conducting an inspection and reviewing medical records on February 25, 2010, the ISDH determined that the resident had been in "immediate jeopardy" beginning on December 9, 2009, but that "immediate jeopardy" status had ended on February 19, 2010.

K.S. immediately began working to correct the problem that had led to the resident being in “immediate jeopardy” after learning of it. On February 20, 2010, K.S. fired the director of nursing for not following treatment protocol and being untruthful. Staff meetings were held regarding the proper prevention and treatment protocols for pressure sores. Also, a plan for correcting the problem and bringing the nursing home back into “substantial compliance” with federal regulations had to be submitted to the ISDH. On April 20, 2010, after another inspection, the ISDH determined that the nursing home was back into “substantial compliance” as of March 27, 2010. As a result of the nursing home not being in “substantial compliance” with regulations between February 18, 2010, and March 27, 2010, the ISDH fined B.P. \$12,850. There is no evidence that the nursing home ever had any other difficulties with ISDH inspections during K.S.’s tenure as administrator.

After the ISDH first informed B.P. and K.S. of the pressure sore issue, K.S. talked to B.P.’s regional director. K.S. asked the regional director if her job was in jeopardy, and he responded that his only concern at that time was bringing the nursing home back into compliance with federal regulations. On April 21, 2010, immediately upon learning that the ISDH had found the nursing home to be back in compliance, the regional director informed K.S. that she could either resign or be fired. K.S. elected to submit her resignation that day.

K.S. filed an application for unemployment benefits. A claims deputy awarded benefits to K.S. B.P. appealed, and after a hearing, an administrative law judge (“ALJ”)

reversed the claims deputy's award. K.S. appealed that decision to the Review Board. On October 13, 2010, the Review Board reversed the ALJ's decision and reinstated the award of unemployment benefits to K.S. B.P. now appeals.

Analysis

On appeal, any decision of the Review Board with respect to unemployment benefits is conclusive and binding as to all questions of fact. Coleman v. Review Bd. of Indiana Dep't of Workforce Dev., 905 N.E.2d 1015, 1019 (Ind. Ct. App. 2009) (citing Ind. Code § 22-4-17-12(a)). Such decisions may be challenged as contrary to law, in which case appellate courts examine the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of facts. Id. (citing I.C. § 22-4-17-12(f)). We review determinations of specific or basic underlying facts, conclusions or inferences drawn from those facts, and legal conclusions. Id.

We must analyze whether a Review Board decision is reasonable in light of its findings, and whether the Review Board's findings 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 a lack of substantial evidence to support the Review Board's findings. Id. We further note that the Indiana Unemployment Compensation Act is given a liberal construction in favor of employees because it is social legislation with an underlying humanitarian purpose. Id. That purpose is to provide benefits to those who

are unemployed through no fault of their own. Giovanoni v. Review Bd. of Indiana Dep't of Workforce Dev., 927 N.E.2d 906, 908-09 (Ind. 2010).

A person is ineligible for unemployment benefits if he or she was discharged from employment for “just cause.” Spieker v. Review Bd. of Indiana Dep't of Workforce Dev., 925 N.E.2d 376, 378 (Ind. Ct. App. 2010). Included within the statutory definition of just cause is “any breach of duty in connection with work which is reasonably owed an employer by an employee.” I.C. § 22-4-15-1(d)(9). This is the only basis upon which B.P. seeks to deny unemployment compensation to K.S. The employer bears the burden of establishing a prima facie showing of just cause for termination, and if that burden is met, the burden shifts to the employee to introduce competent evidence to rebut the employer’s case. Spieker, 925 N.E.2d at 378. Whether an employee was discharged for just cause is a question of fact for the Board to determine. Russell v. Review Bd. of Indiana Dep't of Employment & Training Servs., 586 N.E.2d 942, 948 (Ind. Ct. App. 1992); see also Giovanoni, 927 N.E.2d at 910 (holding that whether a person has become unemployed “without fault” is dependent upon the facts and circumstances of each case).

This court has observed “that the ‘breach of duty’ ground for just discharge is an amorphous one, without clearly ascertainable limits or definition, and with few rules governing its utilization.” Hehr v. Review Bd. of The Indiana Employment Sec. Div., 534 N.E.2d 1122, 1126 (Ind. Ct. App. 1989). Unless the Review Board carefully limits use of this basis for just cause, “it is subject to potential abuse by an employer as a convenient ground upon which to justify a discharge” Id. In determining whether

an employee was discharged for just cause for “breach of duty,” the Review Board should consider whether the conduct leading to termination was of such a nature that a reasonable employee of the employer would understand that the conduct was a violation of a duty owed the employer and that he or she would be subject to discharge for engaging in the activity or behavior. Id.

At a minimum, in order to be discharged for “just cause” and become ineligible for unemployment benefits, a person “must have performed some volitional act or have exercised some control over the circumstances resulting in the discharge from employment.” Giovanoni, 927 N.E.2d at 910 (citing Wakshlag v. Review Bd. of Indiana Employment Sec. Div., 413 N.E.2d 1078, 1082 (Ind. Ct. App. 1980)). An employee need not necessarily have engaged in conduct with the subjective intent to injure his or her employer. See Wakshlag, 413 N.E.2d at 1082. However, we also have described just cause for discharge as:

conduct evidencing such wilful or wanton disregard of the employer’s interest as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his employee, or a carelessness or negligence of such a degree or recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional or substantial disregard of the employer’s interest, or of the employee’s duties or obligation to his employer.

Id.

Conduct found sufficient to satisfy the “amorphous” “breach of duty” standard for a just cause discharge has included an employee’s repeated failure to perform tasks

according to instructions. See id. An employee intentionally striking co-employees' vehicles in an employer's parking lot constitutes a breach of a duty reasonably owed to the employer, but only if it results in damage to the vehicles. See Hehr, 534 N.E.2d at 1127-28. Other examples of breaches of duty include an employee appearing in front of customers while intoxicated, see Osborn v. Review Bd. Of Indiana Employment Sec. Div., 178 Ind. App. 22, 28, 381 N.E.2d 495, 499 (1978), or accumulating excessive traffic tickets such that the employee's insurability as a delivery driver was impacted, see Byrd v. Review Bd. of Indiana Employment Sec. Div., 469 N.E.2d 463, 465-66 (1984), or utilizing company computer equipment to look for a different job, see Spieker, 925 N.E.2d at 379. All of these cases evidence an element of deliberate wrongdoing or repeated incompetence on the employee's part. Such evidence is lacking as to K.S.

That being the case, we cannot conclude that K.S.'s conduct here was such that the Review Board's eligibility determination is unsupported by substantial evidence. Although, as the nursing home administrator, K.S. may have borne ultimate responsibility for any failings as to patient care within the home, there is scant indication that she personally engaged in any volitional act that led to the one patient being placed in "immediate jeopardy." There is no evidence that any other patient had been placed in such jeopardy during K.S.'s employment. There is no evidence that K.S. had previously overlooked patient care problems or otherwise had performed her duties unsatisfactorily in any way. Upon learning of the problem with the one patient, K.S. immediately undertook to correct that problem, including firing the director of nursing at the home and

working with the ISDH to ensure that the home returned to compliance with all applicable regulations as quickly as possible. It was immediately upon satisfactorily completing that task that B.P. effectively fired K.S.

We emphasize that the question before us is not whether B.P. was entitled to fire K.S. Whether an employer may fire an employee for purposes of a wrongful termination case is a much different question than whether that employee is entitled to unemployment benefits. See Coleman, 905 N.E.2d at 1021-22. That being the case, we cannot say that the Review Board erred in finding that the evidence here did not lead to the conclusion that K.S. breached a duty reasonably owed to B.P. There is no evidence that she personally engaged in any volitional act that endangered patients at the nursing home. As such, the Review Board did not err in determining that K.S. had not been discharged for just cause.

Conclusion

We affirm the Review Board's decision to reinstate the award of unemployment benefits to K.S.

Affirmed.

RILEY, J., and DARDEN, J., concur.