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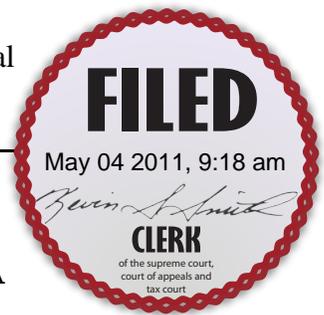
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**IN THE  
COURT OF APPEALS OF INDIANA**

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A.B., )  
 )  
Appellant-Claimant, )  
 )  
vs. )  
 )  
REVIEW BOARD OF THE INDIANA )  
DEPARTMENT OF WORKFORCE )  
DEVELOPMENT, )  
 )  
Appellee-Employer. )

No. 93A02-1009-EX-988

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APPEAL FROM REVIEW BOARD OF THE INDIANA  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
Cause No. 10-R-4159

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**May 4, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Claimant, A.B., appeals the decision by the Review Board of the Indiana Department of Workforce Development (Review Board) denying his request for unemployment benefits.

We affirm.

## ISSUE

A.B. raises one issue for our review, which we restate as follows: Whether A.B. was denied due process of law.

## FACTS AND PROCEDURAL HISTORY

On November 23, 2009, the Indiana Department of Workforce Development (DWD) notified A.B.'s Employer that A.B. had filed a claim for unemployment benefits. Employer responded that their records indicated that A.B. "left work on 7/15/2009 at 11:30 a.m. [and] did not advise his supervisor." (Appellant's App. p. 15). As such, Employer did not believe that A.B. was entitled to benefits. On May 3, 2010, a deputy claims representative with the DWD attempted to contact A.B. by telephone but was unable to reach him at the number listed. A representative of Employer was reached by phone, in which she stated that A.B. had been "[laid off] from 11/18/08-04/28/09 – [and] on 07/15/09 [A.B.] walked off [the] job and no supervisor was notified [that he] quit. [A.B.] left and never returned." (Appellant's App. p. 17). Thus, DWD determined that A.B. was not eligible for unemployment insurance benefits because he "was discharged due to a work-related breach of duty." (Appellant's App. p. 19). DWD's notice stated that either party had the right to appeal the decision and

request a hearing before an administrative law judge (ALJ) “within ten days of the date this determination was mailed or otherwise delivered.” (Appellant’s App. p. 19). This determination was mailed to A.B. and Employer that same day.

On May 4, 2010, a claims deputy with the DWD determined that A.B. was not eligible for unemployment benefits because he “voluntarily left employment without good cause in connection with the work.” (Appellant’s App. p. 21). The determination included the same language regarding A.B.’s ability to appeal the decision and request a hearing before an ALJ within the statutorily required time period. This notice was mailed to A.B. and Employer that same day.

Two months later, on July 26, 2010, A.B. filed an appeal of the deputy’s determination that he was ineligible for unemployment benefits. In his appeal, he stated that he had received the determination notice in May, but did not read the entire letter and was unaware that he had a limited time frame to appeal the decision. On July 28, 2010, the ALJ issued a decision, which was mailed to A.B. that day, dismissing his appeal for lack of jurisdiction because his appeal was filed outside of the statutory thirteen day time period required for timely appeal.

On August 2, 2010, Employer submitted a letter to the Review Board stating that A.B. should not receive unemployment benefits. On August 5, 2010, the Review Board issued a decision which affirmed the ALJ’s dismissal and stated:

This matter is before the Review Board on a timely appeal by the adversely affected party from a decision by the [ALJ]. No hearing was held by the Review Board, and no additional evidence was accepted.

After examining the record, the Review Board adopts and incorporates by reference the findings of fact and conclusion of law of the [ALJ] and affirms the [ALJ's] decision on this 5<sup>th</sup> day of August, 2010.

(Appellant's App. p. 73).

A.B. now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

In appeals of unemployment compensation proceedings, we determine whether the decision of the Review Board is reasonable in light of its findings. *Value World Inc. of Indiana v. Review Bd. of Indiana Dept. of Workforce Dev.*, 927 N.E.2d 945, 947 (Ind. Ct. App. 2010). We are bound by the Review Board's resolution of factual matters; therefore, we do not reweigh the evidence or judge the credibility of the witnesses. *Id.* at 947-48. We consider only the evidence most favorable to the Review Board's decision and the reasonable inferences therefrom, and affirm the judgment of the Review Board if it is supported by substantial evidence which support its conclusions. *Id.* at 948. However, when an appeal addresses a question of law, we are not bound by the Review Board's interpretation of law, and will reverse the decision if it is based upon an incorrect interpretation of the law. *Id.*

A.B. claims that his due process rights were violated when the DWD failed to provide him with notice of the May 3, 2010 determination of his eligibility. The Review Board argues that what occurred on May 3 was not considered a "hearing," and the claims deputy called Employer and A.B. "in an attempt to collect further information to make the initial determination as to whether A.B. was eligible to receive unemployment compensation benefits." (Appellee's Br. p. 6).

Here, we need not determine whether May 3, 2010, was considered a hearing or a fact-gathering determination, as A.B. failed to appeal the determination within the thirteen day time period required for timely appeal. Indiana Code section 22-4-17-2(e) provides that a claimant has ten days following the denial of his benefits to request a hearing before an ALJ or the decision “shall be final and benefits shall be ... denied in accordance therewith.” This ten day period extends to thirteen days because A.B. received service through the mail. *See* I.C. § 22-4-17-14. A.B. does not claim that he did not receive this notice—in fact, in his appeal letter, A.B. admitted that he had received notice but failed to read the entire letter and was unaware that he had a limited time to appeal. If no appeal is taken within the statutorily prescribed time, Indiana Code section 22-4-17-2(i) mandates that the deputy’s determination “*shall be final* and benefits shall be paid or denied in accordance therewith” (emphasis added). Because Indiana Code section 22-4-17-2(e) is jurisdictional in nature, failure to comply with the mandates of the statute results in dismissal of the appeal. *Richards Restaurant v. Lukins*, 667 N.E.2d 806, 809 (Ind. Ct. App. 1996). As such, the Review Board properly dismissed A.B.’s appeal.

### CONCLUSION

Based on the foregoing, we find that the Review Board properly dismissed A.B.’s appeal.

Affirmed.

DARDEN, J., and BARNES, J., concur.